



भारत का राजपत्र

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NEW DELHI, APRIL 15—APRIL 21, 2007, SATURDAY/CHAITRA 25—VAISAKHA 1, 1929

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उप खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्यिक, लोक शिकायत तथा ऐंशन मंत्रालय

(कार्यिक और प्रशिक्षण विभाग)

नई दिल्ली, 30 मार्च, 2007

का.आ. 1076.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री रविन्द्र कुमार स्थापक, अधिवक्ता को मध्य प्रदेश राज्य, भोपाल में दिल्ली विशेष पुलिस स्थापना (सीबीआई) द्वारा संस्थित और केंद्रीय अन्वेषण ब्यूरो द्वारा सौंपे गए मामलों के अभियोजन और विधि द्वारा स्थापित पुनरीक्षण अथवा अपील न्यायालयों में इस मामले से उद्भूत अपीलों/पुनरीक्षणों अथवा अन्य विषय का संचालन करने के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[सं. 225/43/2006-ए. वी. डी.-II]

चंद्र प्रकाश, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 30th March, 2007

S.O. 1076.—In exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government

hereby appoints Shri Ravindra Kumar Sthapak, Advocate as Special Public Prosecutor for conducting the prosecution of cases instituted by the Delhi Special Police Establishment (CBI) in the State of Madhya Pradesh at Bhopal as entrusted to him by the Central Bureau of Investigation in the Trial Courts, and appeals/revisions or other matter arising out of these cases in revisional or appellate Courts established by law.

[No. 225/43/2006-AVD-II]

CHANDRA PRAKASH, Under Secy.

नई दिल्ली, 30 मार्च, 2007

का.आ. 1077.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री अरविन्द यादव, अधिवक्ता को मध्य प्रदेश राज्य, इंदौर में दिल्ली विशेष पुलिस स्थापना (सीबीआई) द्वारा संस्थित और केंद्रीय अन्वेषण ब्यूरो द्वारा सौंपे गए मामलों के अभियोजन और विधि द्वारा स्थापित पुनरीक्षण अथवा अपील न्यायालयों में इस मामले से उद्भूत अपीलों/पुनरीक्षणों अथवा अन्य विषय का संचालन करने के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[सं. 225/44/2006-ए. वी. डी.-II]

चंद्र प्रकाश, अवर सचिव

New Delhi, the 30th March, 2007

S.O. 1077.—In exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Arvind Yadav, Advocate as Special Public Prosecutor for conducting the prosecution of cases instituted by the Delhi Special Police Establishment (CBI) in the State of Madhya Pradesh at Indore as entrusted to him by the Central Bureau of Investigation in the Trial Courts, and appeals/revisions or other matter arising out of these cases in revisional or appellate Courts established by law.

[No. 225/44/2006-AVD-II]

CHANDRA PRAKASH, Under Secy.

विज्ञ मंत्रालय

(आर्थिक कार्य विभाग)

(बीमा प्रभाग)

नई दिल्ली, 18 अप्रैल, 2007

का.आ. 1078.—जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा श्री ए. के. दासगुप्ता, भारतीय जीवन बीमा निगम के प्रबंध निदेशक को 3 अप्रैल, 2007 (अपराह्न) से, अर्थात् उनकी अधिवार्षित की तारीख अथवा अगले आदेश तक, जो भी पहले हो, उपर्युक्त निगम का सदस्य नियुक्त करती है।

[सं. 14/11/2004-बीमा IV]

बी.पी. भारद्वाज, निदेशक (बीमा)

**MINISTRY OF FINANCE
(Department of Economic Affairs)
(Insurance Division)**

New Delhi, the 18th April, 2007

S.O. 1078.—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints Shri A.K. Dasgupta, Managing Director, Life Insurance Corporation of India as a Member of the said Corporation with effect from 3rd April, 2007 (Afternoon) till the date of his superannuation or till further orders, whichever is earlier.

[No. 14/11/2004-Ins. IV]

V. P. BHARDWAJ, Director (Insurance)

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 28 मार्च, 2007

का.आ. 1079.—भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) (ख) के उपबंध के अनुसरण में डॉ. एस. के. कटियार, प्रिंसिपल जी एस वी एम मेडिकल कालेज, कानपुर, काय चिकित्सा संकाय सदस्य, छत्रपति साहुजी

महाराज कानपुर विश्वविद्यालय कानपुर को इस अधिसूचना के जारी होने की तारीख से पांच वर्षों की अवधि के लिए छत्रपति साहुजी महाराज कानपुर विश्वविद्यालय की अकादमिक परिषद् (सीनेट/कोर्ट के समकक्ष) द्वारा भारतीय आयुर्विज्ञान परिषद् के एक सदस्य के रूप में निर्वाचित किया गया है।

उत्तः, अब, उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण में केन्द्र सरकार एतद्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में “धारा 3 की उपधारा (1) के खण्ड (ख) के अधीन निर्वाचित” शीर्षक के अंतर्गत क्रम संख्या 49 के सामने निम्नलिखित प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात् :—

“49. डॉ. एस.के. कटियार, छत्रपति साहुजी महाराज प्रिंसिपल कानपुर विश्वविद्यालय”
जी एस वी एम मेडिकल कालेज, कानपुर

[सं. वी-11013/6/2006-एम.इ.(नीति-I)]

टी. जे. एस. चावला, अवर सचिव

**MINISTRY OF HEALTH AND FAMILY WELFARE
(Department of Health)**

New Delhi, the 28th March, 2007

S.O. 1079.—Whereas in pursuance of the provision of Sub-section (1) (b) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) of Dr. S.K. Katiyar, Principal, GSVM Medical College, Kanpur member of the faculty of Medicine, Chhatrapati Sahuji Maharaj Kanpur University, Kanpur has been elected by the Academic Council of the Chhatrapati Sahuji Maharaj Kanpur University (equivalent to Senate/Court) to be a member of the Medical Council of India for five years with effect from date of issue of this notification.

Now, therefore, in pursuance of the provision of Sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138 dated the 9th January, 1960, namely :—

In the said Notification, under the heading, “Elected under clause (b) of Sub-section (1) of Section 3”, against serial number 49, following entries shall be substituted, namely :—

“49. Dr. S.K. Katiyar
Principal,
GSVM Medical College,
Kanpur
Chhatrapati Sahuji
Maharaj Kanpur
University”

[No. V-11013/6/2006-ME(P-I)]

T. J. S. CHAWLA, Under Secy.

नई दिल्ली, 28 मार्च, 2007

का.आ. 1080.—भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1)(ख) के उपबंध के अनुसरण में केन्द्र सरकार ने उत्तर प्रदेश के पंजीकृत चिकित्सा स्नातक निर्वाचन क्षेत्र में निर्वाचन करवाया है जहां से डॉ. जे.एल. साहनी, प्रोफेसर, निदेशक एल.पी.एस., हृदय रोग संस्थान को इस अधिसूचना के जारी होने की तारीख से पांच वर्षों की अवधि के लिए मगध विश्वविद्यालय की सीनेट द्वारा भारतीय आयुर्विज्ञान परिषद् के सदस्य के रूप में निर्विरोध निर्वाचित किया गया है।

अतः, अब, उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण में केन्द्र सरकार एतद्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में “धारा 3 की उपधारा (1) के खण्ड (ग) के अधीन निर्वाचित” शीर्षक के अंतर्गत क्रम संख्या 9 तथा उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्या तथा प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात् :—

“9. डॉ. जे.एल. साहनी,
प्रोफेसर निदेशक,
एल.पी.एस., हृदय रोग
संस्थान, कानपुर”

[सं. बी.-11013/13/2006-एम.इ.(नीति-I)]

टी. जे. एस. चावला, अवर सचिव

New Delhi, the 28th March, 2007

S.O. 1080.—Whereas the Central Government in pursuance of clause (c) of Sub-section (1) Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) has conducted the election from the Registered Medical Graduate Constituency of Uttar Pradesh wherefrom Dr. J.L. Sahni, Professor Director, L.P.S. Hridya Rog Sansthan, Kanpur has been elected unopposed to be a member of the Medical Council of India with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of Sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138 dated the 9th January, 1960, namely :—

In the said Notification, under the heading, “Elected under clause (c) of Sub-section (1) of Section 3”, for the serial number 9, and the entries relating thereto the following serial number and entries shall be substituted, namely :—

“9. Dr. J.L. Sahni,
Professor Director
L.P.S. Hridya Rog Sansthan,
Kanpur”

[No. V-11013/13/2006-ME(Policy-I)]

T. J. S. CHAWLA, Under Secy.

नई दिल्ली, 28 मार्च, 2007

का.आ. 1081.—भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1)(ख) के उपबंध के अनुसरण में डॉ. एम. रामनाथन, संकायाध्यक्ष, काय चिकित्सा संकाय, अन्नामलाई विश्वविद्यालय, अन्नामलाई नगर, सदस्य कायचिकित्सा संकाय, अन्नामलाई विश्वविद्यालय को इस अधिसूचना के जारी होने की तारीख से पांच वर्षों की अवधि के लिए अन्नामलाई विश्वविद्यालय की सीनेट द्वारा सर्वसम्मति से भारतीय आयुर्विज्ञान परिषद के एक सदस्य के रूप में निर्विरोध निर्वाचित किया गया है।

अतः, अब, उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण में केन्द्र सरकार एतद्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में “धारा 3 की उपधारा (1) के खण्ड (ग) के अधीन निर्वाचित” शीर्षक के अंतर्गत क्रम संख्या 59 के बाद निम्नलिखित प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात् :—

“70. डॉ. एम. रामनाथन, अन्नामलाई विश्वविद्यालय”

संकायाध्यक्ष, कायचिकित्सा

संकाय,

अन्नामलाई विश्वविद्यालय,

अन्नामलाई नगर

[सं. बी.-11013/1/2007-एम.इ.(नीति-I)]

टी. जे. एस. चावला, अवर सचिव

New Delhi, the 28th March, 2007

S.O. 1081.—Whereas in pursuance of the provision of Sub-section (1) (b) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) Dr. M. Ramanathan, Dean, Faculty of Medicine, Annamalai University, Annamalai-nagar member of the faculty of Medicine, Annamalai University has been elected unanimously by the Senate of the Annamalai University to be a member of the Medical Council of India for five years with effect from date of issue of this notification.

Now, therefore, in pursuance of the provision of Sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138 dated the 9th January, 1960, namely :—

In the said Notification, under the heading, "Elected under clause (b) of Sub-section (1) of Section 3", against serial number 70, following entries shall be substituted, namely:—

"70. Dr. M. Ramanathan Annamalai University"
 Dean, Faculty of Medicine,
 Annamalai University,
 Annamalainagar

[No. V-11013/1/2007-ME(Policy-I)]

T. J. S. CHAWLA, Under Secy.

नई दिल्ली, 28 मार्च, 2007

का.आ. 1082.—भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1)(ख) के उपबंध के अनुसरण में डॉ. विजय कुमार सिंह 38/60 अफिसर्स फ्लैट, हड़ताली मोड़, बेली रोड, पटना, काय चिकित्सा संकाय सदस्य, मगध विश्वविद्यालय को इस अधिसूचना के जारी होने की तारीख से पांच वर्षों की अवधि के लिए मगध विश्वविद्यालय को सीनेट द्वारा भारतीय आयुर्विज्ञान परिषद के एक सदस्य के रूप में निर्विरोध निर्वाचित किया गया है।

अतः, अब, उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण में केन्द्र सरकार एतद्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित और संशोधन करती है, अर्थात्:—

उक्त अधिसूचना में "धारा 3 की उपधारा (1) के खण्ड (ख) के अधीन निर्वाचित" शीर्षक के अंतर्गत क्रम संख्या 59 के सामने निम्नलिखित प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात्:—

"59. डॉ. विजय कुमार सिंह मगध विश्वविद्यालय"
 38/60 अफिसर्स फ्लैट,
 हड़ताली मोड़, बेली रोड,
 पटना

[सं. वी-11013/1/2007-एम ई (नीति-I)]

टी. जे. एस. चावला, अवर सचिव

New Delhi, the 28th March, 2007

S.O. 1082.—Whereas in pursuance of the provision of Sub-section (1) (b) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) Dr. Vijay Kumar Singh, 38/60, Officers Flat, Hartali More, Bailey Road, Patna member of the faculty of Medicine, Magadh University has been elected unopposed by the Senate of the Magadh University to be a member of the Medical Council of India for five years with effect from date of issue of this notification.

Now, therefore, in pursuance of the provision of Sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138 dated the 9th January, 1960, namely:—

In the said Notification, under the heading, "Elected under clause (b) of Sub-section (1) of Section 3", against serial number 59, the following entries shall be substituted, namely:—

"59. Dr. Vijay Kumar Singh Magadh University"
 38/60, Officers Flat
 Hartali More,
 Bailey Road,
 Patna

[No. V-11013/1/2007-ME (P-I)]

T. J. S. CHAWLA, Under Secy.

नई दिल्ली, 5 अप्रैल, 2007

का.आ. 1083.—केन्द्रीय सरकार दत्त चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय दत्त चिकित्सा परिषद् से परामर्श करके उक्त अधिनियम की अनुसूची के भाग-I में एतद्वारा निम्नलिखित संशोधन करती है; अर्थात् :—

2. महाराष्ट्र यूनिवर्सिटी आफ हैल्थ साइंसेज, नासिक द्वारा तरना डेंटल कालेज, नवी मुम्बई के संबंध भें दत्त चिकित्सा अर्हता की मान्यता के संबंध में दत्त चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-I क्रम सं. 60 के सामने स्तंभ 2 तथा 3 की मौजूदा प्रविष्टियों में निम्नलिखित प्रविष्टियां रखी जाएंगी :—

"XVIII. तरना डेंटल कालेज, बी डी एस महाराष्ट्र यूनिवर्सिटी
 नवी मुम्बई (i) आफ हैल्थ साइंसेज,
 चैचलर आफ डेंटल सर्जरी नासिक"
 (यदि 8-8-2006 को
 अथवा उसके बाद प्रदान
 की गई हो)

[सं. वी-12017/26/2002-पी. एम एस/डी ई]

राज सिंह, अवर सचिव

New Delhi, the 5th April, 2007

S.O. 1083.—In exercise of the powers conferred by Sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, namely:—

2. In the existing entries of column 2 & 3 against Serial No. 60, in Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) pertaining to recognition of dental qualification in respect of Terna Dental College, Navi Mumbai, awarded by Maharashtra University of Health Sciences, Nashik, the following entries shall be inserted thereunder :—

"XVIII. Terna Dental College,
Navi Mumbai
(i) Bachelor of Dental
Surgery (When granted
on or after 8-8-2006).
BDS, Maharashtra
University of Health
Sciences, Nashik."

[No. V-12017/26/2002-PMS/DE]
RAJ SINGH, Under Secy.

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

(पूर्ति विभाग)

नई दिल्ली, 9 अप्रैल, 2007

का.आ. 1084.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में वाणिज्य एवं उद्योग मंत्रालय, वाणिज्य विभाग (पूर्ति प्रभाग) के निम्नलिखित कार्यालय में हिंदी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के फलस्वरूप इस कार्यालय को एतद्वारा अधिसूचित करती है :—

सहायक निदेशक (गुणता आश्वासन),
सी.जी.ओ. काम्पलेक्स "सी",
दूसरी मॉजिल, सेमीनरी हिल्स,
नागपुर-440 006

[फा. सं. ई-11016/6/2004-हिन्दी]

भारती सिवास्वामी सिहाग, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY
(Department of Commerce)
(Supply Division)

New Delhi, the 9th April, 2007

S.O. 1084.—In pursuance of Sub-rule (4) of Rule (10) of Official Language (Use for Official purposes of the Union) Rules, 1976, the Central Government hereby notify the following office of the Ministry of Commerce and Industry, Department of Commerce (Supply Division), where more than 80% of Staff have acquired working knowledge of Hindi :—

Assistant Director (Quality Assurance),
CGO Complex Block "C",
2nd Floor, Seminary Hills,
Nagpur-440 006.

[F. No. E-11016/6/2004-Hindi]

BHARATHI S. SIHAG, Jt. Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 9 मार्च, 2007

का.आ. 1085.—इस मंत्रालय की दिनांक 8-1-2007 की समसंख्यक अधिसूचना के अनुक्रम में और चलचित्र (प्रमाणन)

नियमावली, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार तत्काल प्रभाव से दो वर्षों की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, केन्द्रीय फिल्म प्रमाणन बोर्ड के कोलकाता सलाहकार पैनल के सदस्यों के रूप में सुश्री कृष्णाकली, 22/A चक्रबरिया लेन, कोलकाता-700020 को नियुक्त करती है।

[फा. सं. 809/1/2006-एफ (सी)]

संगीता सिंह, निदेशक (फिल्म)

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 9th March, 2007

S.O. 1085.—In continuation of this Ministry's notification of even number dated 8-1-2007 and in exercise of the powers conferred by Sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint Ms. Krishnakali Ghosh, 22/A, Chakraberia Lane, Kolkata-700020 as member of the Kolkata Advisory Panel of the Central Board of Film Certification with immediate effect for a period of two years or until further orders, whichever is earlier.

[F. No. 809/1/2006-F(C)]

SANGEETA SINGH, Director (Films)

नई दिल्ली, 29 मार्च, 2007

का.आ. 1086.—चलचित्र (प्रमाणन) नियमावली, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार तत्काल प्रभाव से दो वर्षों की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, केन्द्रीय फिल्म प्रमाणन बोर्ड के चेन्नई सलाहकार पैनल का पुनर्गठन करती है और उक्त पैनल के सदस्यों के रूप में निम्नलिखित व्यक्तियों को नियुक्त करती है। यह इस मंत्रालय की दिनांक 5 फरवरी, 2005 की अधिसूचना संख्या 809/4/2004 एफ (सी) का अधिक्रमण करती है।

क्र.सं.	नाम
1.	श्री राजम एम. पी. नाथन
2.	श्रीमती एस. कथीजा शीरीन
3.	सुश्री एस. ज्योतिमणि
4.	सुश्री ए. मिरजा
5.	श्री रामनारायण
6.	श्री मुक्ता बी. श्रीनिवासन
7.	श्री त्यागराजन
8.	श्रीमती एम. सरोजा
9.	श्री ई. वी. राजन

क्र.सं.	नाम	क्र.सं.	नाम
10.	श्री कायल दिग्गजरण	47.	श्रीमती भानू लॉरेंस
11.	श्री एस. कण्णपन	48.	श्रीमती मीणा सेल्वाराज
12.	श्री कु. का सेल्वम	49.	श्री जी.आर. बैंकटेश
13.	श्री एम. पी. बालासुब्रमण्यन	50.	श्री काथीपारा जनार्दनन
14.	श्री मु. मेथा	51.	श्री कक्कन कस्तूरीभाई
15.	डॉ. ईरोड तमिलन्वन	52.	प्रो. डा. वी. नागराजन
16.	श्री एस. त्यागू	53.	श्रीमती थीरूप्पुर सरोजा
17.	श्री के. स्वर्णम	54.	श्री बालासुब्रामणियन के
18.	श्री आर. श्रीनिवासन	55.	श्री वी.एस. नायडू
19.	श्री पुछी एस. मुरुगन	56.	श्री ए.वी. श्रीनिवासन
20.	श्री डॉ. नल्ली कुप्पुस्वामी चेटिट्यार	57.	श्री एम. कुमारेसन
21.	श्रीमती गीतालक्ष्मी	58.	श्री विष्णु वर्धन रेड्डी
22.	श्री वेंकटचलम ताथन्बन	59.	श्री आर. मोहन
23.	श्री बी. सेल्वन	60.	डा. ललिता सुब्रामणियम
24.	श्री आर.एल. कण्णन	61.	डा. एस.अमुथा कुमार
25.	श्री एच.एम. मुस्तफा	62.	श्री एन. कार्तिकेयन
26.	श्री ए.एस.टी. जयरामन	63.	श्री लेखा माधव
27.	श्रीमती लक्ष्मी राजाराम	64.	श्री श्रीनिवासा राव
28.	श्रीमती एस. दिविजा कुमारी	65.	डॉ. विजय शंकर
29.	श्री सी. बालासुन्दरम	66.	श्री चेपर रवि
30.	श्री इकांबरम	67.	श्री एम.जी. सुरेश
31.	श्री टी. विजया रवि वर्मा	68.	श्रीमती सुधा श्रीनिवासन
32.	श्री के. सेल्वाराज पांडियन	69.	श्रीमती सुगंध श्रीनिवासन
33.	श्री वी.के. अरिवाजगन	70.	श्रीमती चित्रा कृष्णस्वामी
34.	श्री सी.आर. सुन्दर राजन	71.	श्री रेणनाथन रथिनम
35.	श्रीमती जी. सरस्वती नालडियर	72.	श्रीमती कौशल्या पदमानाभन
36.	श्रीमती मीणा वेंकटरामण	73.	श्रीमती शांता रघुनाथन
37.	श्री मरियप्पा भास्कर	74.	श्रीमती एस. प्रेमा
38.	श्री मुनावर बासा	75.	श्रीमती एस. सरस्वती
39.	श्री एम.सी. जबरुल्लाह	76.	श्री एस. अरुणमौजी
40.	श्रीमती सुशीला पदमानाभन	77.	श्रीमती निर्मला सुरेश
41.	श्री के. स्वामीनाथन	78.	श्रीमती इंदुमति
42.	श्री ए.जे. जॉय	79.	डॉ. जया श्रीधर
43.	डॉ. रवि भारती	80.	श्रीमती ललिता श्रीराम
44.	श्रीमती प्रेमा श्रीनिवासन	81.	डॉ. के. मालती
45.	श्री ए. बालाकृष्णन	82.	डॉ. मतांगी रामाकृष्णन (पदमश्री)
46.	श्रीमती रानी कृष्णन	83.	श्रीमती निकिला

क्र.सं.	नाम
84.	श्रीमती स्वर्णा राजा
85.	श्रीमती स्वर्णलता
86.	श्रीमती लीना मणिमेकलई
87.	श्री आर.एम. अबुल कलाम
88.	श्री वी. बालू
89.	श्री आर.एस. प्रकाश
90.	श्री टी.जे. ज्ञानवेलू
91.	श्री रजत
92.	श्री गोकिला स्वामीनाथन
93.	सुश्री भीरा बालाजी

[फा. सं. 809/2/2007-एक (सी)]

संगीता सिंह, निदेशक (फिल्म)

New Delhi, the 29th March, 2007

S.O. 1086.—In exercise of the powers conferred by Sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to re-constitute the Chennai Advisory Panel of the Central Board of Film Certification and to appoint the following persons as members of the said panel with immediate effect for a period of two years or until further orders, whichever is earlier. This supersedes this Ministry's Notification No. 809/4/2004-F(C) dated 5th February, 2005.

Sl. No.	Name
1.	Shri Raajam M.P. Nathan
2.	Smt. S. Katheja Sheereen
3.	Ms. S. Jothimani
4.	Ms. A. Girija
5.	Shri Ramanarayanan
6.	Shri Muktha V. Srinivasan
7.	Shri Thiagarajan
8.	Smt. M. Saroja
9.	Shri E.V. Rajan
10.	Shri Kayal Dinakaran
11.	Shri S. Kannappan
12.	Shri Ku. Ka. Selvam
13.	Shri M.P. Balasubramanian
14.	Shri Mu. Metha
15.	Dr. Erode Tamilanban
16.	Shri S. Thiagu
17.	Shri K. Swarnam
18.	Shri R. Srinivasan
19.	Shri Poochi S. Murugan

Sl. No.	Name
20.	Dr. Nalli Kuppuswami Chettiar
21.	Smt. Geethalakshmi
22.	Shri Venkatachalam Thayanban
23.	Shri B. Selvan
24.	Shri R. L. Kannan
25.	Shri H.M. Musthafa
26.	Shri A.S.T. Jayaraman
27.	Smt. Lakshmi Rajaram
28.	Smt. S. Divijakumari
29.	Shri C. Balasundaram
30.	Shri Ekambaram
31.	Shri T. Vijaya Ravi Verma
32.	Shri K. Selyaraj Pandian
33.	Shri V. K. Arivazhagan
34.	Shri C.R. Sunder Rajan
35.	Smt. G. Saraswathi Naladiar
36.	Smt. Meena Venkatraman
37.	Shri Mariappa Basker
38.	Shri Munavar Basha
39.	Shri M. C. Zabarullah
40.	Smt. Susheela Padmanabhan
41.	Shri K. Swaminathan
42.	Shri A. J. Joy
43.	Dr. Ravi Bharathi
44.	Smt. Prema Srinivasan
45.	Shri A. Balakrishnan
46.	Smt. Rani Krishnan
47.	Smt. Banu Lawrence
48.	Smt. Meena Selvaraj
49.	Shri G.R. Venkatesh
50.	Shri Kathipara Janardhanan
51.	Kakkan Kasturibhai
52.	Prof Dr. V. Nagarajan
53.	Smt. Thiruppur Saroja
54.	Shri Balasubramanian K.
55.	Shri V.S. Naidu
56.	Shri A.V. Srinivasan
57.	Shri M. Kumaresan
58.	Shri Vishnu Vardhana Reddy
59.	Shri R. Mohan
60.	Dr. Lalitha Subramanian
61.	Dr. S. Amutha Kumar

Sl. No.	Name
62.	Shri N. Karthikeyan
63.	Srilekha Madhav
64.	Shri Srinivasa Rao
65.	Dr. Vijay Shankar
66.	Shri Cheyar Ravi
67.	Shri M.G. Suresh
68.	Smt. Sudha Srinivasan
69.	Smt. Sugandha Srinivasan
70.	Mrs. Chitra Krishnaswami
71.	Shri Renganathan Rathinam
72.	Smt. Kausalya Padmanabhan
73.	Smt. Shantha Raghunathan
74.	Smt. S. Prema
75.	Smt. S. Saraswathy
76.	Shri S. Arunmozhி
77.	Smt. Nirmala Suresh
78.	Smt. Indumathi
79.	Dr. Jaya Sridhar
80.	Smt. Lalitha Sriram
81.	Dr. K. Malathi
82.	Dr. Mathangi Ramakrishna (Padmashree)
83.	Smt. Nikila
84.	Smt. Swarna Raja
85.	Smt. Swarnalatha
86.	Mrs. Leena Manimekalai
87.	Shri R.M. Abulkalam
88.	Shri V. Balu
89.	Shri R.S. Prakash
90.	Shri T.J. Gnanavelu
91.	Shri Rajath
92.	Smt. Gokila Swaminathan
93.	Ms. Meera Balaji

[F. No. 809/2/2007-F(C)]

SANDEEPA SINGH, Director (Films)

नई दिल्ली, 14 मार्च, 2007

का.आ. 1087.—इस मंत्रालय की दिनांक 30 अगस्त, 2005 की समसंख्यक अधिसूचना के अनुक्रम में और चलचित्र (प्रमाणन) नियमावली, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार तत्काल प्रभाव से दो वर्षों की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, केन्द्रीय फिल्म प्रमाणन बोर्ड के मुम्बई सलाहकार पैनल के सदस्य के रूप में श्री राजाराम जगन्नाथ तनवडे, 17/8 आर्य नगर, तारदेव, मुम्बई-34 को नियुक्त करती है।

[फा. सं. 809/1/2004-एफ(सी)]

संगीता सिंह, निदेशक (फिल्म)

New Delhi, the 14th March, 2007

S.O. 1088.—In continuation of this Ministry's notification of even number dated 30th August, 2005 and in exercise of the powers conferred by Sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint Shri Rajaram Jagannath Tanawde, 17/8, Arya Nagar, Tardeo, Mumbai-34 as member of the Mumbai Advisory Panel of the Central Board of Film Certification with immediate effect for a period of two years or until further orders, whichever is earlier.

[F. No. 809/1/2004-F(C)]

SANDEEPA SINGH, Director (Films)

युवा कार्यक्रम और खेल मंत्रालय

नई दिल्ली, 4 अप्रैल, 2007

का.आ. 1089.—केन्द्रीय सरकार एतद्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप-नियम (4) के अनुसरण में युवा कार्यक्रम और खेल मंत्रालय के निम्नलिखित कार्यालयों, जिनके 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है :—

1. भारतीय खेल प्राधिकरण प्रशिक्षण केन्द्र, पोण्डा, गोवा।
2. नेहरू युवा केन्द्र संगठन, मंडल कार्यालय, गोमती नगर, लखनऊ।
3. राष्ट्रीय सेवा योजना क्षेत्रीय केन्द्र, अलीगंज, लखनऊ।

[फा. सं. ई. 11011/6/2005-हि.ए.]

इन्वेति श्रीनिवास, संयुक्त सचिव

MINISTRY OF YOUTH AFFAIRS AND SPORTS

New Delhi, the 4th April, 2007

S.O. 1089.—In pursuance of sub-rule (4) of Rule (10) of the Official Language (Use for Official purpose of the Union) Rule, 1976, the Central Government hereby notifies following offices under Ministry of Youth Affairs and Sports, whereof more than 80% Staff have acquired working knowledge of Hindi :—

1. Sports Authority of India-Training Centre, Ponda, Goa.
2. Nehru Yuva Kendra Sangathan, Zonal Office, Gomti Nagar, Lucknow.
3. National Service Scheme Regional Centra, Aliganj, Lucknow.

[F.No. E-11011/6/2005-H.U.]

INJETI SRINIVAS, Jt. Secy.

कृषि मंत्रालय

(कृषि एवं सहकारिता विभाग)

नई दिल्ली, 13 अप्रैल, 2007

का.आ. 1090.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में कृषि एवं सहकारिता विभाग, कृषि मंत्रालय के प्रशासनिक नियंत्रणाधीन सुपारी और मसाला विकास निदेशालय, कालिकट को जिसके 80% कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

सुपारी और मसाला विकास निदेशालय,
वेस्ट हिल (पोस्ट),
कनूर रोड,
कालिकट, केरल-673 005.

[सं. 3-6/2004-हिन्दी नीति]

पी. के. जलाली, संयुक्त सचिव

MINISTRY OF AGRICULTURE

(Department of Agriculture and Cooperation)

New Delhi, the 13th April, 2007

S.O. 1090.—In pursuance of Sub-rule (4) of Rule (10) of the Official Language (Use for Official purposes of the Union) Rule, 1976, the Central Government hereby notifies the Directorate of Areca nut & Spices Development, Calicut under the Administrative control of the Department of Agriculture and Cooperation, Ministry of Agriculture, 80% staff whereof have acquired the working knowledge of Hindi :—

Directorate of Areca nut & Spices
Development,
West Hill (Post),
Kannur Road,
Calicut, Kerala-673 005.

[No. 3-6/2004-Hindi Neeti]

P. K. JALALI, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 5 अप्रैल, 2007

का.आ. 1091.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक (को) में संशोधन किया गया/किये गये हैं :—

अनुसूची

क्रम संख्याधित भारतीय मानक संशोधन की संख्या, वर्ष और तिथि	संशोधन लागू होने की तिथि		
(1)	(2)	(3)	(4)
2 आई एस 7098(भाग 2) : 1985 की संशोधन संख्या 1	1 नवम्बर, 1988	29-3-2007	

इस भारतीय संशोधन की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चंडीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे तथा तिरुवनन्तपुरम से बिक्री हेतु उपलब्ध हैं।

[सं. ईटी 09/टी-44]

पी. के. मुखर्जी, वैज्ञा. 'एफ' एवं प्रमुख (विद्युत तकनीकी)

**MINISTRY OF CONSUMER AFFAIRS, FOOD AND
PUBLIC DISTRIBUTION**
(Department of Consumer Affairs)
Bureau of Indian Standards

New Delhi, the 5th April, 2007

S.O. 1091.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed has been issued :

SCHEDULE I

Sl. No. & Year of No. the Indian Standard	No. & year of the Amendment	Date from which the Amendments shall have effect	
(1)	(2)	(3)	(4)
2. IS 7098 : Part 2 : 1985 Cross-linked polyethylene insulated PVC sheathed cables : Part 2 For working voltages from 3.3 kV up to and including 33kV	61. November 1988	29-03-2007	

Copy of this Amendment is available with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[No. : ET 09/T-44]

P. K. MUKHERJEE, Sc. 'F' & Head (Electro Technical)

कांगड़ा दिल्ली 9 अप्रैल, 2007

का.आ. 1092.—सरलोत्तम मानक द्वारा दिया 7 के नियम 7 के उप-नियम (1) के बांध (ख) के अनुसरण में भारतीय मानक द्वारे एतद्वारा अधिकारीत कराया है जिस भीन अनुसार में दिए गए मानक (को) के द्वारा दिया गया रखी गयी है :

अनुसृति

क्रम संसाधन आवलो नम्बर	संसाधन दी जाने की तिथि		
(को)	संसाधन आवलो नम्बर और शीर्षक		
(1)	(2)	(3)	(4)
2. आई एस 694 : 1990	04 जनवरी, 2007	04-04-2007	

संख्या 4

भारतीय संसाधन की प्रतियां भारतीय मानक द्वारा, मानक भवन, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों वर्ष 2006, कालकाता, चंडीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों वर्ष 2006, अमृदलाल, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, गोप्ता, कामपुर, घट्टाना, पूर्णे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[सं. ईटी 09/टी-7]

पा. के. मुखर्जी, वैज्ञा. 'एफ' एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 9th April, 2007

S.O. 1092.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed has been issued :

SCHEDULE

No. of Year of the Indian Standard	No. & year of the Amendments	Date from which the Amendments shall have effect	
(1)	(2)	(3)	(4)
2. IS 694 : 1990	04. January, 2007	4-04-2007	

Copy of this Amendment is available with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[No. : ET 09/T-7]
P. K. MUKHERJEE, Sc. 'F' & Head (Electro technical)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 16 अप्रैल, 2007

का. आ. 1093.— केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाईन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 2703 एवं का.आ. 3630 क्रमशः तारीख 06-07-2006 एवं 07-09-2006 द्वारा, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में गेल (इण्डिया) लिमिटेड द्वारा राजस्थान राज्य में विजयपुर-कोटा एवं स्पर पाइपलाईनों के माध्यम से प्राकृतिक गैस के परिवहन के लिए पाइपलाईन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और उक्त राजपत्रित अधिसूचना की प्रतियाँ जनता को तारीख 04-12-2006 तक उपलब्ध करा दी गई थी;

और पाइपलाईन बिछाने के संबंध में जनता से कोई आक्षेप प्राप्त नहीं हुए;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और सक्षम प्राधिकारी ने, उक्त रिपोर्ट पर विचार करने के पश्चात् और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाईनों बिछाने के लिए अपेक्षित हैं, उस में उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाईनों बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है;

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निर्देश देती है कि पाइपलाईनों बिछाने के लिए भूमि में उपयोग का अधिकार, इस घोषणा के प्रकाशन की तारीख को, केन्द्रीय सरकार में निहित होने की बजाए, पाइपलाईनों बिछाने का प्रस्ताव करने वाली गेल (इण्डिया) लिमिटेड में निर्धारित होगा और तदुपरि, भूमि में ऐसे उपयोग का अधिकार, इस प्रकार अधिरोपित निबंधनों और शर्तों के अधीन रहते हुए, सभी विलंगमों से मुक्त, गेल (इण्डिया) लिमिटेड में निहित होगा।

अनुसूची

जिला	तहसील	गाँव	सर्व नं.	आर.ओ.यू. अर्जित करने के लिए क्षेत्र (हेक्ट. में)
1	2	3	4	5
कोटा	लाडपुरा	रस्तलपुर	246	0.1280
			247	0.0560
			135	0.0250
			136	0.0420
			137	0.0620
			योग	0.3130

1	2	3	4	5
कोटा	लाडपुरा	मोरपा	166	0.1780
			54	0.0840
			3	0.0300
			योग	0.2920
कोटा	लाडपुरा	राजनगर	411	0.0440
			योग	0.0440
कोटा	लाडपुरा	उम्मेदगंज	79/583	0.4880
			योग	0.4880
कोटा	दीगोद	पाघड़ा की झोपड़ी	203/323	0.0020
			योग	0.0020
कोटा	दीगोद	पोलाई कलां	809 मी.	0.0420
			योग	0.0420

[फा. स. एल 14014/16/2006-जी. पी.]

एस. बी. मण्डल, अवर सचिव

Ministry of Petroleum and Natural Gas

New Delhi, the 16th April, 2007

S. O. 1093.—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 2703 and S.O. 3630 dated 06-07-2006 and 07-09-2006 respectively issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of Users in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to that notification for the purpose of laying pipeline for transport of natural gas through Vijaipur – Kota and its spur pipelines in the State of Rajasthan by the GAIL (India) Limited;

And whereas copies of the said Gazette notification were made available to the public on 04-12-2006;

And whereas no objections were received from the public to the laying of the pipeline;

And whereas the Competent Authority has, under sub-section (1) of Section 6 of the said Act, submitted its report to the Central Government.

And whereas the Central Government has, after considering the said report, decided to acquire the Right of User in the lands specified in the Schedule;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the Right of User in the land specified in the Schedule is hereby acquired for laying the pipeline;

And, further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the Right of User in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest, on this date of the publication of the declaration, in the GAIL (India) Limited, free from all encumbrances.

SCHEDULE

District	Tahsil	Village	Survey No.	Area to be acquired for R.O.U. (in Hect.)
1	2	3	4	5
KOTA	Ladpura	Rasulpur	246	0.1280
			247	0.0560
			135	0.0250
			136	0.0420
			137	0.0620
			Total	0.3130
KOTA	Ladpura	Morpa	166	0.1780
			54	0.0840
			3	0.0300
			Total	0.2920
KOTA	Ladpura	Rajnagar	411	0.0440
			Total	0.0440
KOTA	Ladpura	Ummedganj	79/583	0.4880
			Total	0.4880
KOTA	Digod	Pachada Ki	203/323	0.0020
			Total	0.0020
KOTA	Digod	Polai Kalā	609 M	0.0420
			Total	0.0420

[F. No. L-14014/16/2006-G.P.]

S. B. MANDAL, Under Secy.

नई दिल्ली, 16 अप्रैल, 2007

का. आ. 1094.— केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गेल (इण्डिया) लिमिटेड द्वारा आर.-एल.एन.जी. के परिवहन के लिए मध्य प्रदेश राज्य में कैलारस-मालनपुर स्पर पाइपलाईन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को उक्त पाइपलाईन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में, जिसमें उक्त पाइपलाईन बिछाए जाने का प्रस्ताव है और जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है, उपयोग के अधिकार का अर्जन किया जाए;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाईन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रत्याँ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाईन बिछाए जाने के संबंध में, श्री वी.के. अग्रवाल, सक्षम प्राधिकारी, गेल (इण्डिया) लिमिटेड, ए.डी.एम. कार्यालय, जिला मुरैना (मध्य प्रदेश) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

जिला	तहसील	गाँव	सर्वे संख्या	आर.ओ.यू के लिए अर्जित क्षे. (हेक्ट. में)
1	2	3	4	5
मुरैना	जौरा	गणेशपुर	434	0.02

फ. सं. एल-14014/14/2005-जी. पी. (भाग-I)]

एस. बी. मण्डल, अवर सचिव

New Delhi, the 16th April, 2007

S. O. 1094.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transportation of R-LNG through Kailaras to Malanpur spur pipeline in the State of Madhya Pradesh, a pipeline should be laid by GAIL (India) Limited;

And, whereas it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the Right of User in the land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may, within twenty one days from the date on which the copies of the notification issued under sub-section (1) of Section 3 of the said Act, as published in the Gazette of India are made available to the general public, object in writing to the laying of the pipeline under the land to Shri V.K. Agrawal, Competent Authority, GAIL (India) Limited, ADM office, District Morena (Madhya Pradesh).

SCHEDULE

District	Tehsil	Village	Survey No.	Area to be acquired for ROU (in Hectare)
1	2	3	4	5
Morena	Joura	Ganeshpur	434	0.02

[F. No. L-14014/14/2005-G.P. (Part I)]

S. B. MANDAL, Under Secy.

नई दिल्ली, 16 अप्रैल, 2007

का. आ. 1095.—केन्द्रीय सरकार ने पेट्रोलियम और प्राकृतिक गैस मंत्रालय के का.आ. 3804 दिनांक 18.09.2006, द्वारा पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे उसके पश्चात उक्त अधिनियम कहा जायेगा) की धारा 3(1) के अधीन अधिसूचना प्रकाशित कर, दादरी (उत्तरप्रदेश राज्य में) से पानीपत (हरियाणा राज्य में) तक, प्राकृतिक गैस के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा “आर.-एल.एन.जी. स्पर पाइपलाइन” के सम्बन्ध में उक्त अधिसूचना से संलग्न अनुसूची में निर्दिष्ट तहसील मोदीनगर जिला गाज़ियाबाद (उत्तरप्रदेश राज्य) की भूमि में उपयोग के अधिकार के अर्जन के अपने आशय की घोषणा की थी;

और, उक्त अधिसूचना की प्रतियां जनता को दिनांक 06.11.2006 को उपलब्ध करा दी गई थीं;

और, उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में सक्षम प्राधिकारी ने केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और, केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात इस अधिसूचना से उपाबद्ध अनुसूची में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है,

अतः, अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये घोषणा करती है कि इस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के उपयोग का अधिकार अर्जित किया जाता है;

और, केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने की बजाय सभी विलंगमों से मुक्त होकर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

अनुसूची

तहसील : मोदीनगर	जिला : गाज़ियाबाद	राज्य : उत्तर प्रदेश		
		क्षेत्रफल		
		हेक्टेयर	एकर	वर्गमीटर
1	2	3	4	5
1. महोउद्दीनपुर हिसाली	405	0	06	95
	403	0	00	30
	396	0	19	04
	402	0	17	46
	398	0	00	20
	401	0	10	69
	415	0	11	40
	388	0	03	03
	416	0	11	76
	387	0	04	39
	386	0	13	19
	385	0	23	88

गाँव का नाम	खसरा संख्या	क्षेत्रफल		
		हेक्टेयर	एकर	वर्गमीटर
1	2	3	4	5
2. बसन्तपुर सेंतली	770	0	04	72
	769	0	02	85
	768	0	02	14
	766	0	26	37
	736	0	09	09
	764	0	14	28
	763	0	05	18
	760	0	03	39
	759	0	04	12
	755	0	05	99
	754	0	00	71
	744	0	07	13
	747	0	02	38
	746	0	04	90
	737	0	04	36
	740	0	07	23
	741	0	06	89
	745	0	06	51
	653	0	02	85
	652	0	02	14
	651	0	02	14
	614	0	49	64
	615	0	22	28
	586	0	00	36
	585	0	00	89
	325	0	15	14
	327	0	27	09
	329	0	28	51
	330	0	20	67
	331	0	00	36
	333	0	04	63
	334	0	09	27
	335	0	00	53
	351	0	00	36
	350	0	19	07

गोंद का नाम	पुस्तक संख्या	क्षेत्रफल		
		हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5
	352	0	06	42
	353	0	11	41
	354	0	00	53
	355	0	00	53
	358	0	11	76
	360	0	03	75
	361	0	16	93
	362	0	00	36
	559	0	02	50
	558	0	00	89
	557	0	00	89
	538	0	00	53
	479	0	10	69
	478	0	03	80
	480	0	00	63
	481	0	00	95
	520	0	00	53
	521	0	00	48
	511	0	02	77
	512	0	06	95
	513	0	01	39
	510	0	00	36
	491	0	05	97
	492	0	02	52
	489	0	00	36
	488	0	00	53
	482	0	12	47
	468	0	00	36
	467	0	00	89
	470	0	00	20
	405	0	04	10
	404	0	01	03
	403	0	01	54
	402	0	19	27
	401	0	01	29
	395	0	31	01

गाँव का नाम	खसरा संख्या	क्षेत्रफल		
		हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5
	396	0	14	08
	388	0	03	17
	385	0	21	74
	386	0	01	43
3. नबीपुर	297	0	17	02
	298	0	12	83
	299	0	08	87
	300	0	01	07
	301	0	00	79
	302	0	00	79
	303	0	00	83
	304	0	00	59
	276	0	00	36
	275	0	00	89
	244/541	0	09	27
	241	0	03	56
	245	0	21	02
	246	0	01	19
	247	0	00	79
	240	0	00	24
	250	0	01	19
	248	0	10	69
	249	0	06	95
	343	0	00	40
	344	0	00	89
	203	0	12	47
	204	0	30	03
	205	0	02	85
	191	0	00	53
	181	0	22	81
	182	0	03	97
	159	0	04	28
	88	0	57	74
	80	0	02	61
	74	0	00	53
4. मिलक चाकरपुर	341	0	12	65
	323	0	01	43

गाँव का नाम 1	खसरा संख्या 2	क्षेत्रफल		
		हेक्टेयर 3	एयर 4	वर्गमीटर 5
	269	0	10	34
	268	0	34	39
	270	0	01	03
	271	0	01	54
	267	0	00	20
	279	0	20	49
	280	0	16	67
	281	0	02	49
	288	0	00	53
	289	0	00	98
	290	0	06	86
	291	0	07	84
	292	0	07	84
	293	0	07	84
	294	0	07	13
	295	0	13	85
	297	0	00	62
	298	0	00	71
	299	0	03	80
	300	0	00	71
	301	0	18	71
	243	0	00	71
	50	0	15	33
	49	0	10	69
	47	0	00	20
	46	0	05	94
	45	0	03	36
	44	0	00	59
	40	0	09	62
	41	0	00	53
	42	0	00	89
	39	0	06	28
	38	0	00	71
	37	0	00	53
	33	0	02	38
	16	0	01	54
	9	0	11	12

गाँव का नाम	खसरा संख्या	क्षेत्रफल		
		हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5
	8	0	08	55
	7	0	03	56
	6	0	04	28
	5	0	13	54
	4	0	07	66
	3	0	04	63
	1	0	00	89
5. किशनचन्दपुर पट्टी	47	0	08	28
	46	0	01	32
	44	0	00	88
	43	0	06	12
	42	0	22	86
	41	0	08	64
	40	0	00	54
	39	0	02	64
	38	0	00	63
	36	0	00	40
	35	0	17	64
	34	0	00	18
	33	0	00	72
	26	0	09	54
	22	0	01	04
	23	0	01	56
	21	0	30	60
	16	0	00	88
	17	0	26	10
	15	0	00	20
	18	0	00	54
	19	0	00	36
6. मानौली	392	0	00	89
	393	0	01	07
	394	0	01	39
	395	0	00	48
	391	0	01	78
	390	0	00	20
	389	0	04	60
	388	0	06	47

गाँव का नाम	खसरा संख्या	क्षेत्रफल		
		इक्टेयर	एयर	वर्गमीटर
1	2	3	4	5
	387	0	07	31
	386	0	01	07
	385	0	00	71
	384	0	01	25
	383	0	01	25
	381	0	14	61
	380	0	00	36
	379	0	02	87
7. सुल्ताननगर छज्जूपुर	616	0	00	20
	617	0	17	86
	612	0	05	22
	611	0	17	69
	606	0	00	53
	595	0	04	83
	594	0	02	38
	592/663	0	00	53
	592	0	12	83
	591	0	11	58
	618	0	00	20
	278	0	00	53
	289	0	22	10
	290	0	00	27
	291	0	00	89
	295	0	18	53
	294	0	10	34
	561	0	01	43
	424	0	00	20
	382	0	07	67
	383	0	02	23
	384	0	03	21
	385	0	02	22
	380	0	00	65
	386	0	00	20
	379	0	02	19
	378	0	01	66
	376	0	03	21
	375	0	07	72

गाँव का नाम 1	खसरा संख्या 2	क्षेत्रफल		
		हेक्टेयर 3	एयर 4	वर्गमीटर 5
	374	0	08	38
	372	0	04	95
	371	0	03	47
	363	0	02	08
	368	0	00	79
	367	0	10	89
	392	0	02	13
8. हुसैनपुर	309	0	00	53
	311	0	01	72
	310	0	05	33
	312	0	00	48
	307	0	01	80
	306	0	00	83
	305	0	02	67
	313	0	06	53
	319	0	07	13
	318	0	01	29
	320	0	05	35
	321	0	07	66
	322	0	25	66
	323	0	01	27
	324	0	19	58
	328	0	00	59
	329	0	03	02
	330/722	0	00	36
	331	0	00	53
	332	0	19	25
	334	0	00	53
	342	0	00	20
	341	0	09	72
	340	0	02	97
	345	0	07	13
	339/707	0	01	90
	339	0	16	57
	352	0	00	53
	354	0	28	51

गाँव का नाम	खसरा संख्या	क्षेत्रफल		
		हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5
	360	0	13	54
	361	0	00	71
	366	0	09	27
	364	0	00	53
	365	0	09	52
	363	0	00	27
9. सहलापुर	699	0	00	54
	681	0	11	34
	609	0	01	56
	552	0	00	70
	553	0	11	34
	554	0	01	98
	555	0	03	24
	557	0	03	60
	558	0	06	48
	559	0	06	48
	560	0	00	54
	561	0	00	36
	566	0	00	20
	568	0	10	08
	567	0	04	50
	572	0	00	54
	573	0	06	66
	574	0	11	34
	575	0	01	20
	493	0	00	42
	492	0	00	54
	491	0	14	22
	490	0	00	54
	480	0	00	90
	489	0	02	97
	488	0	00	90
	487	0	00	20
	477	0	12	18
	478	0	00	54
	476	0	01	08

गाँव का नाम	खसरा संख्या	क्षेत्रफल		
		हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5
	479	0	02	24
	463	0	05	94
	464	0	00	20
	465	0	00	20
	462	0	00	36
	1	0	00	72
10. बिहँग	471	0	01	78
	472	0	00	36
	494	0	05	52
	484	0	00	20
	493	0	12	30
	492	0	04	99
	495	0	00	36
	496	0	00	36
	509	0	00	20
	510	0	00	20
	511	0	00	20
	512	0	05	46
	513	0	04	36
	516	0	01	48
	514	0	01	42
	515	0	08	28
	518	0	00	20
	524	0	08	17
	523	0	00	20
	525	0	00	72
	521	0	00	49
	526	0	00	48
	527	0	07	72
	531	0	00	63
	532	0	00	53
	574	0	00	36
	577	0	00	30
	576	0	00	36

गाँव का नाम	खारा संख्या	क्षेत्रफल		
		हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5
	575	0	15	21
	573	0	02	06
	568	0	23	82
	567	0	00	36
	566	0	00	89
	565	0	02	32
	559	0	01	68
	560	0	04	01
	561	0	11	68
	562	0	00	36
	563	0	00	20
	557	0	00	98
11. नेकपुर सावितनगर	1950	0	00	53
	1949	0	29	39
	1943	0	00	53
	1903	0	11	58
	1939	0	43	48
	1878	0	00	53
	1877	0	00	36
	1832	0	07	31
	1838	0	00	22
	1839	0	00	30
	1841	0	00	59
	1829	0	00	20
	1833	0	04	12
	1826	0	06	42
	1816	0	04	63
	1812	0	00	40
	1811	0	04	79
	1810	0	06	92
	1808	0	00	20
	1802	0	00	53
	1803	0	00	36
	1799	0	06	06

गाँव का नाम 1	खसरा संख्या 2	क्षेत्रफल		
		हेक्टेयर 3	एयर 4	वर्गमीटर 5
	1798	0	03	80
	1794	0	06	42
	1795	0	03	30
	1787	0	19	25
	1879	0	00	71
	1880	0	00	89
	1301	0	05	17
	1302	0	00	89
	1305	0	03	08
	1308	0	00	20
	1306	0	01	58
	1307	0	02	77
	1309	0	02	38
	1310	0	02	38
	1311	0	08	38
	1312	0	02	77
	1318	0	02	61
	1745	0	00	20
	1439	0	00	89
	1744	0	05	88
	1741	0	08	91
	1740	0	03	92
	1739	0	04	90
	1738	0	04	37
	1737	0	05	35
	1736	0	02	85
	1724	0	00	71
	1721/2093	0	00	79
	1688	0	00	71
	1687	0	00	71
	1685	0	00	35
	1686	0	20	67
	1445	0	00	71

गाँव का नाम 1	खसरा संख्या 2	क्षेत्रफल		
		हेक्टेयर 3	एयर 4	वर्गमीटर 5
	111	0	10	69
	141	0	00	89
	142	0	29	22
	143	0	11	23
	150	0	00	71
	137	0	00	36
	136	0	02	36
	182	0	01	74
	180	0	00	89
	181	0	00	89
	178	0	22	45
	179	0	23	52
	351	0	04	44
	352	0	02	57
	350	0	06	06
	320	0	04	45
	321	0	05	52
	347	0	01	38
	348	0	01	43
	346	0	03	56
	345	0	06	75
	344	0	00	20
	331	0	05	29
	333	0	02	91
	334	0	00	25
	332	0	03	21
	474	0	07	48
	473	0	09	71
	472	0	10	34
	470	0	07	66
	469	0	00	20
	502	0	13	72
	503	0	20	67
	517	0	17	28

गाँव का नाम 1+	खसरा संख्या 2	क्षेत्रफल		
		हेक्टेयर 3	एयर 4	वर्गमीटर 5
	523	0	10	04
	526	0	00	30
	524	0	08	55
	521	0	00	59
	531	0	01	30
	530	0	07	48
	533	0	02	02
	534	0	18	35
	535	0	00	99
	532	0	01	19
	1721	0	56	61

[फा. सं. एल-14014/29/2006-जी. पी.]

एस. बी. मण्डल, अवर सचिव

New Delhi, the 16th April, 2007

S. O. 1095.—Whereas by notification of Government of India in the Ministry of Petroleum and Natural Gas, published in the Gazette of India vide number S.O. 3804 dated the 18th September 2006, issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to this notification, in Tehsil Modinagar, District Ghaziabad, in Uttar Pradesh State; for the purpose of laying pipeline for the transportation of natural gas from Dadri in the state of Uttar Pradesh to Panipat in the state of Haryana by the Indian Oil Corporation Limited;

And whereas copies of the said gazette notification were made available to the public on 06.11.2006.

And whereas, the Competent Authority has under sub-section (1) of section 6 of the said Act, submitted his report to the Central Government.

And whereas, the Central Government after considering the said report is satisfied that the right of user in the land specified in the Schedule appended to this notification should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is acquired;

And further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of users in the said land shall instead of vesting in the Central Government, vest from the date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

SCHEDULE

Tehsil : Modinagar		District : Ghaziabad	State : Uttar Pradesh		
Name of Village	Khasra No.	Area			Square Meter
		Hectare	Are		
1	2	3	4	5	
1. MOHIUDDINPUR HISALI	405	0	06	95	
	403	0	00	30	
	396	0	19	04	
	402	0	17	46	
	398	0	00	20	
	401	0	10	69	
	415	0	11	40	
	388	0	03	03	
	416	0	11	76	
	387	0	04	39	
	386	0	13	19	
	385	0	23	88	
2. BASANTPUR SAINTLI	770	0	04	72	
	769	0	02	85	
	768	0	02	14	
	766	0	26	37	
	736	0	09	09	
	764	0	14	28	
	763	0	05	18	
	760	0	03	39	
	759	0	04	12	
	755	0	05	99	
	754	0	00	71	
	744	0	07	13	
	747	0	02	38	
	746	0	04	90	
	737	0	04	36	
	740	0	07	23	
	741	0	06	89	
	745	0	06	51	
	653	0	02	85	

Name of Village 1	Khasra No. 2	Area		
		Hectare 3	Are 4	Square Meter 5
	652	0	02	14
	651	0	02	14
	614	0	49	64
	615	0	22	28
	586	0	00	36
	585	0	00	89
	325	0	15	14
	327	0	27	09
	329	0	28	51
	330	0	20	67
	331	0	00	36
	333	0	04	63
	334	0	09	27
	335	0	00	53
	351	0	00	36
	350	0	19	07
	352	0	06	42
	353	0	11	41
	354	0	00	53
	355	0	00	53
	358	0	11	76
	360	0	03	75
	361	0	16	93
	362	0	00	36
	559	0	02	50
	558	0	00	89
	557	0	00	89
	538	0	00	53
	479	0	10	69
	478	0	03	80
	480	0	00	63
	481	0	00	95
	520	0	00	53
	521	0	00	48

Name of Village 1	Khasra No. 2	Area		
		Hectare 3	Are 4	Square Meter 5
	511	0	02	77
	512	0	06	95
	513	0	01	39
	510	0	00	36
	491	0	05	97
	492	0	02	52
	489	0	00	36
	488	0	00	53
	482	0	12	47
	468	0	00	36
	467	0	00	89
	470	0	00	20
	405	0	04	10
	404	0	01	03
	403	0	01	54
	402	0	19	27
	401	0	01	29
	395	0	31	01
	396	0	14	08
	388	0	03	17
	385	0	21	74
	386	0	01	43
3. NABIPUR	297	0	17	02
	298	0	12	83
	299	0	08	87
	300	0	01	07
	301	0	00	79
	302	0	00	79
	303	0	00	83
	304	0	00	59
	276	0	00	36
	275	0	00	89
	244/541	0	09	27
	241	0	03	56

Name of Village	Khasra No.	Area		
		Hectare	Are	Square Meter
1	2	3	4	5
	245	0	21	02
	246	0	01	19
	247	0	00	79
	240	0	00	24
	250	0	01	19
	248	0	10	69
	249	0	06	95
	343	0	00	40
	344	0	00	89
	203	0	12	47
	204	0	30	03
	205	0	02	85
	191	0	00	53
	181	0	22	81
	182	0	03	97
	159	0	04	28
	88	0	57	74
	80	0	02	61
	74	0	00	53
4. MILAK CHAKARPUR	341	0	12	65
	323	0	01	43
	269	0	10	34
	268	0	34	39
	270	0	01	03
	271	0	01	54
	267	0	00	20
	279	0	20	49
	280	0	16	67
	281	0	02	49
	288	0	00	53
	289	0	00	98
	290	0	06	86
	291	0	07	84
	292	0	07	84

Name of Village	Khasra No.	Area		
		Hectare	Are	Square Meter
1	2	3	4	5
	293	0	07	84
	294	0	07	13
	295	0	13	85
	297	0	00	62
	298	0	00	71
	299	0	03	80
	300	0	00	71
	301	0	18	71
	243	0	00	71
	50	0	15	33
	49	0	10	69
	47	0	00	20
	46	0	05	94
	45	0	03	36
	44	0	00	59
	40	0	09	62
	41	0	00	53
	42	0	00	89
	39	0	06	28
	38	0	00	71
	37	0	00	53
	33	0	02	38
	16	0	01	54
	9	0	11	12
	8	0	08	55
	7	0	03	56
	6	0	04	28
	5	0	13	54
	4	0	07	66
	3	0	04	63
	1	0	00	89
5. KISHAN CHANDPUR PATTI	47	0	08	28
	46	0	01	32
	44	0	00	88

Name of Village	Khasra No.	Area		
		Hectare	Are	Square Meter
1	2	3	4	5
	43	0	06	12
	42	0	22	86
	41	0	08	64
	40	0	00	54
	39	0	02	64
	38	0	00	63
	36	0	00	40
	35	0	17	64
	34	0	00	18
	33	0	00	72
	26	0	09	54
	22	0	01	04
	23	0	01	56
	21	0	30	60
	16	0	00	88
	17	0	26	10
	15	0	00	20
	18	0	00	54
	19	0	00	36
6. MANAULI	392	0	00	89
	393	0	01	07
	394	0	01	39
	395	0	00	48
	391	0	01	78
	390	0	00	20
	389	0	04	60
	388	0	06	47
	387	0	07	31
	386	0	01	07
	385	0	00	71
	384	0	01	25
	383	0	01	25
	381	0	14	61
	380	0	00	36

Name of Village 1	Khasra No. 2	Area		
		Hectare 3	Are 4	Square Meter 5
		0	02	87
7. SULTANNAGAR CHAJJUPUR	379	0	02	87
	616	0	00	20
	617	0	17	86
	612	0	05	22
	611	0	17	69
	606	0	00	53
	595	0	04	83
	594	0	02	38
	592/663	0	00	53
	592	0	12	83
	591	0	11	58
	618	0	00	20
	278	0	00	53
	289	0	22	10
	290	0	00	27
	291	0	00	89
	295	0	18	53
	294	0	10	34
	561	0	01	43
	424	0	00	20
	382	0	07	67
	383	0	02	23
	384	0	03	21
	385	0	02	22
	380	0	00	65
	386	0	00	20
	379	0	02	19
	378	0	01	66
	376	0	03	21
	375	0	07	72
	374	0	08	38
	372	0	04	95
	371	0	03	47
	363	0	02	08

Name of Village	Khasra No.	Area		
		Hectare	Are	Square Meter
1	2	3	4	5
8. HUSAINPUR	368	0	00	79
	367	0	10	89
	392	0	02	13
	309	0	00	53
	311	0	01	72
	310	0	05	33
	312	0	00	48
	307	0	01	80
	306	0	00	83
	305	0	02	67
	313	0	06	53
	319	0	07	13
	318	0	01	29
	320	0	05	35
	321	0	07	66
	322	0	25	66
	323	0	01	27
	324	0	19	58
	328	0	00	59
	329	0	03	02
	330/722	0	00	36
	331	0	00	53
	332	0	19	25
	334	0	00	53
	342	0	00	20
	341	0	09	72
	340	0	02	97
	345	0	07	13
	339/707	0	01	90
	339	0	16	57
	352	0	00	53
	354	0	28	51
	360	0	13	54
	361	0	00	71

Name of Village	Khasra No.	Area		
		Hectare	Are	Square Meter
1	2	3	4	5
9. ROHILLAPUR	366	0	09	27
	364	0	00	53
	365	0	09	52
	363	0	00	27
	699	0	00	54
	681	0	11	34
	609	0	01	56
	552	0	00	70
	553	0	11	34
	554	0	01	98
	555	0	03	24
	557	0	03	60
	558	0	06	48
	559	0	06	48
	560	0	00	54
	561	0	00	36
	566	0	00	20
	568	0	10	08
	567	0	04	50
	572	0	00	54
	573	0	06	66
	574	0	11	34
	575	0	01	20
9. ROHILLAPUR	493	0	00	42
	492	0	00	54
	491	0	14	22
	490	0	00	54
	480	0	00	90
	489	0	02	97
	488	0	00	90
	487	0	00	20
	477	0	12	18
	478	0	00	54
	476	0	01	08

Name of Village 1	Khasra No. 2	Area		
		Hectare 3	Are 4	Square Meter 5
	479	0	02	24
	463	0	05	94
	464	0	00	20
	465	0	00	20
	462	0	00	36
	1	0	00	72
10. BIHANG	471	0	01	78
	472	0	00	36
	494	0	05	52
	484	0	00	20
	493	0	12	30
	492	0	04	99
	495	0	00	36
	496	0	00	36
	509	0	00	20
	510	0	00	20
	511	0	00	20
	512	0	05	46
	513	0	04	36
	516	0	01	48
	514	0	01	42
	515	0	08	28
	518	0	00	20
	524	0	08	17
	523	0	00	20
	525	0	00	72
	521	0	00	49
	526	0	00	48
	527	0	07	72
	531	0	00	63
	532	0	00	53
	574	0	00	36
	577	0	00	30
	576	0	00	36

Name of Village	Khasra No.	Area		
		Hectare	Are	Square Meter
1	2	3	4	5
	575	0	15	21
	573	0	02	06
	568	0	23	82
	567	0	00	36
	566	0	00	89
	565	0	02	32
	559	0	01	68
	560	0	04	01
	561	0	11	68
	562	0	00	36
	563	0	00	20
	557	0	00	98
11. NEKHPUR SABIT NAGAR	1950	0	00	53
	1949	0	29	39
	1943	0	00	53
	1903	0	11	58
	1939	0	43	48
	1878	0	00	53
	1877	0	00	36
	1832	0	07	31
	1838	0	00	22
	1839	0	00	30
	1841	0	00	59
	1829	0	00	20
	1833	0	04	12
	1826	0	06	42
	1816	0	04	63
	1812	0	00	40
	1811	0	04	79
	1810	0	06	92
	1808	0	00	20
	1802	0	00	53
	1803	0	00	36
	1799	0	06	06

Name of Village 1	Khasra No. 2	Area		
		Hectare 3	Are 4	Square Meter 5
	1798	0	03	80
	1794	0	06	42
	1795	0	03	30
	1787	0	19	25
	1879	0	00	71
	1880	0	00	89
	1301	0	05	17
	1302	0	00	89
	1305	0	03	08
	1308	0	00	20
	1306	0	01	58
	1307	0	02	77
	1309	0	02	38
	1310	0	02	38
	1311	0	08	38
	1312	0	02	77
	1318	0	02	61
	1745	0	00	20
	1439	0	00	89
	1744	0	05	88
	1741	0	08	91
	1740	0	03	92
	1739	0	04	90
	1738	0	04	37
	1737	0	05	35
	1736	0	02	85
	1724	0	00	71
	1721/2093	0	00	79
	1688	0	00	71
	1687	0	00	71
	1685	0	00	35
	1686	0	20	67
	1445	0	00	71

Name of Village 1	Khasra No. 2	Area		
		Hectare 3	Are 4	Square Meter 5
	111	0	10	69
	141	0	00	89
	142	0	29	22
	143	0	11	23
	150	0	00	71
	137	0	00	36
	136	0	02	36
	182	0	01	74
	180	0	00	89
	181	0	00	89
	178	0	22	45
	179	0	23	52
	351	0	04	44
	352	0	02	57
	350	0	06	06
	320	0	04	45
	321	0	05	52
	347	0	01	38
	348	0	01	43
	346	0	03	56
	345	0	06	75
	344	0	00	20
	331	0	05	29
	333	0	02	91
	334	0	00	25
	332	0	03	21
	474	0	07	48
	473	0	09	71
	472	0	10	34
	470	0	07	66
	469	0	00	20
	502	0	13	72
	503	0	20	67
	517	0	17	28

Name of Village	Khasra No.	Area		
		Hectare	Are	Square Meter
1	2	3	4	5
	523	0	10	04
	526	0	00	30
	524	0	08	55
	521	0	00	59
	531	0	01	30
	530	0	07	48
	533	0	02	02
	534	0	18	35
	535	0	00	99
	532	0	01	19
	1721	0	56	61

[F. No. L-14014/29/2006-G.P.]

S. B. MANDAL, Under Secy.

नई दिल्ली, 16 अप्रैल, 2007

का. आ. 1096.—केन्द्रीय सरकार ने पेट्रोलियम और प्राकृतिक गैस मंत्रालय के का.आ. 3805 दिनांक 18.09.2006, द्वारा पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे उसके पश्चात् उक्त अधिनियम कहा जायेगा) की धारा 3(1) के अधीन अधिसूचना प्रकाशित कर, दादरी (उत्तरप्रदेश राज्य में) से पानीपत (हरियाणा राज्य में) तक, प्राकृतिक गैस के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा “आर.-एल.एन.जी. स्पर पाइपलाइन” के सम्बन्ध में उक्त अधिसूचना से संलग्न अनुसूची में निर्दिष्ट तहसील गाजियाबाद जिला गाजियाबाद (उत्तरप्रदेश राज्य) की भूमि में उपयोग के अधिकार के अर्जन के अपने आशय की घोषणा की थी;

और, उक्त अधिसूचना की प्रतियां जनता को दिनांक 06.11.2006 को उपलब्ध करा दी गई थी;

और, उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में सक्षम प्राधिकारी ने केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और, केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात् इस अधिसूचना से उपाबद्ध अनुसूची में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है;

अतः, अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये घोषणा करती है कि इस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के उपयोग का अधिकार अर्जित किया जाता है;

और, केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने की बजाय सभी विलंगमों से मुक्त होकर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

अनुसूची

तहसील : गाजियाबाद		ज़िला : गाजियाबाद		राज्य : उत्तर प्रदेश	
गाँव का नाम	खसरा संख्या	क्षेत्रफल			
		हेक्टेयर	एकर	वर्गमीटर	
1	2	3	4	5	
1. सादतनगर इकला	385	0	00	20	
	351	0	00	20	
	350	0	00	20	
	349	0	14	26	
	339	0	00	71	
	338	0	13	90	
	337	0	03	32	
	336	0	00	48	
	334	0	00	36	
	333	0	00	53	
	331	0	12	11	
	332	0	05	70	
	309	0	00	71	
	328	0	00	36	
	308	0	01	78	
	310	0	25	38	
	302	0	48	37	
	297	0	00	20	
	298	0	05	70	
	301	0	06	05	
	299	0	05	35	
2. डासना	4356	0	12	96	
	4353	0	11	52	
	4352	0	03	20	
	4350	0	07	64	
	4351	0	00	48	
	4348	0	07	56	
	4349	0	06	12	
	4347	0	10	44	
	4345	0	01	92	

गाँव का नाम 1	खसरा संख्या 2	क्षेत्रफल		
		हेक्टेयर 3	एयर 4	वर्गमीटर 5
	4183	0	00	72
	4182	0	02	16
	4181	0	00	84
	4121	0	20	52
	4120	0	06	12
	4113	0	15	84
	4112	0	12	24
	4114	0	11	88
	4105	0	00	72
	4103	0	04	20
	4102	0	10	62
	4101	0	01	20
	4097	0	03	78
	4099	0	00	72
	4100	0	07	56
	4098	0	02	10
	4048	0	02	16
	4046	0	00	90
	4009	0	00	54
	4010	0	00	36
	4007	0	24	12
	4008	0	23	94
	4005	0	00	54
	4003	0	13	32
	4002	0	08	28
	4001	0	00	20
	3995	0	00	72
	3996	0	00	36
	3991	0	16	92
	3992	0	10	80
	3993	0	00	90
	3989	0	02	10
	3987	0	09	90

गाँव का नाम 1	खसरा संख्या 2	क्षेत्रफल		
		हेक्टेयर 3	एयर 4	वर्गमीटर 5
1	2	3	4	5
	3953	0	01	98
	3943	0	23	40
	3945	0	01	08
	3946	0	20	88
	3948	0	00	20
	3949	0	05	76
	3950	0	18	72
	3952	0	01	44
	3844	0	00	90
	3845	0	03	36
	3846/4400	0	01	68
	3847	0	18	90
	3848	0	05	76
	3849	0	01	08
	3824	0	00	72
	3823	0	11	88
	3846	0	07	92
	3924	0	02	16
	3925	0	01	26
	3926	0	01	44
	993	0	28	80
	1106	0	04	32
	1099	0	00	30
	1100	0	05	40
	1096	0	04	68
	1095	0	13	32
	1113	0	03	24
	1119	0	04	68
	1117	0	17	64
	1122	0	00	36
	1123	0	00	36
	1124	0	00	54
	1125	0	00	40

गाँव का नाम 1	खसरा संख्या 2	क्षेत्रफल		
		हेक्टेयर 3	एयर 4	वर्गमीटर 5
	1132	0	07	20
	1181	0	14	58
	1127	0	00	20
	1130	0	18	36
	1128	0	04	32
	1082	0	01	80
	1081	0	11	88
	1137	0	01	44
	1138	0	02	16
	1139	0	33	84
	1218	0	03	24
	1219	0	01	44
	1220	0	02	16
	1225	0	16	56
	1227	0	10	08
	1242	0	01	26
	1280	0	01	44
	1281	0	01	08
	130	0	12	96
	129	0	01	08
	132	0	02	16
	133	0	10	80
	134	0	16	92
	124	0	00	36
	123	0	00	54
	121	0	06	12
	122	0	00	72
	103	0	02	56
	104	0	11	88
	105	0	00	54
	106	0	00	54
	108	0	06	12
	107	0	09	00

गाँव का नाम	खसरा संख्या	क्षेत्रफल		
		हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5
	111	0	00	72
3. रसूलपुर सिकरोड़	460	0	18	08
	426	0	14	79
	427	0	28	51
	428	0	12	83
	431	0	00	20
	432	0	00	20
	425	0	00	71
	411	0	00	36
	410	0	10	69
	409	0	00	20
	406	0	25	30
	363	0	00	36
	364	0	00	71
	268	0	09	62
	269	0	02	61
	267	0	00	20
	270	0	11	94
	272	0	13	54
	274	0	00	40
	273	0	12	91
	277	0	00	27
	287	0	00	48
	265	0	00	71
	266	0	00	27
	248	0	02	40
	261	0	17	99
	262	0	05	07
	260	0	00	99
	263	0	03	56
	259	0	16	75
	258	0	00	36
	257	0	00	89

गाँव का नाम	खसरा संख्या	क्षेत्रफल		
		हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5
4. सदरपुर	910	0	00	20
	909	0	00	24
	908	0	13	36
	907	0	07	12
	905	0	01	96
5. मटियाला	633	0	28	27
	632	0	00	53
	635	0	02	93
	630	0	00	36
	629	0	24	94
	628	0	04	28
	627	0	17	71
	626	0	01	19
	636	0	05	35
	638	0	12	47
	637	0	00	71
	531	0	00	36
	530	0	09	43
	533	0	00	53
	540	0	22	10
	538	0	16	93
	537	0	01	11
	536	0	07	01
	542	0	00	36
	543	0	01	60
	535	0	00	53
	447	0	05	35
	436	0	09	98
	451	0	00	20
	448	0	00	53
	450	0	02	77
	449	0	00	77
	435	0	02	85

गाँव का नाम	खसरा संख्या	क्षेत्रफल		
		हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5
	428	0	06	32
	429	0	02	18
	430	0	09	63
	431	0	12	83
	417	0	27	44
	349	0	04	63
	332	0	00	20
	333	0	02	49
	348	0	28	69
	355	0	00	36
	354	0	00	53
	361	0	25	83
	15	0	06	42
	55	0	06	88
	38	0	00	80
	40	0	11	40
	43	0	00	59
	42	0	05	51
	41	0	25	30
	35	0	02	85
	31	0	16	39
	30	0	06	73
6. कनौजा	789	0	00	71
	788	0	00	95
	787	0	29	84
	786	0	15	32
	784	0	00	20
	783	0	01	68
	782	0	02	67
	686	0	07	12
	687	0	04	93
	688	0	00	42
	689	0	08	19

गाँव का नाम	खसरा संख्या	क्षेत्रफल		
		हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5
	673	0	21	20
	683	0	00	36
	736	0	00	36
	672	0	00	36
	670	0	12	83
	669	0	00	36
	665	0	24	94
	666	0	00	20
7. दुहाई	1489	0	01	63
	1482	0	07	12
	1481	0	00	19
	1480	0	03	48
	1479	0	07	48
	1478	0	17	99
	1468	0	27	08
	1467	0	00	89
	1465	0	19	50
	1460	0	01	43
	1457	0	10	52
	1455	0	00	20
	1456	0	11	04
	1452	0	01	37
	1450	0	00	24
	1451	0	10	40
	1449	0	01	43
	1434	0	02	37
	1433	0	03	20
	1432	0	02	31
	1437	0	02	85
	1430	0	13	18
	1421	0	06	05
	1427	0	03	16
	1422	0	16	75

गाँव का नाम	खसरा संख्या	क्षेत्रफल		
		हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5
	1419	0	00	20
	1417	0	21	38
	1415	0	21	02

[फा. सं. एल-14014/29/2006-जी. पी.]

एस. बी. मण्डल, अबर सचिव

New Delhi, the 16th April, 2007

S. O. 1096.—Whereas by notification of Government of India in the Ministry of Petroleum and Natural Gas, published in the Gazette of India vide number S.O. 3805 dated the 18th September 2006, issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to this notification, in Tehsil Ghaziabad, District Ghaziabad, in Uttar Pradesh State; for the purpose of laying pipeline for the transportation of natural gas from Dadri in the state of Uttar Pradesh to Panipat in the state of Haryana by the Indian Oil Corporation Limited;

And whereas copies of the said gazette notification were made available to the public on 06.11.2006.

And whereas, the Competent Authority has under sub-section (1) of section 6 of the said Act, submitted his report to the Central Government.

And whereas, the Central Government after considering the said report is satisfied that the right of user in the land specified in the Schedule appended to this notification should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is acquired;

And further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of users in the said land shall instead of vesting in the Central Government, vest from the date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

SCHEDULE

Tehsil : Ghazlabad		District: Ghaziabad	State: Uttar Pradesh		
Name of Village	Khasra No.	Area			Square Meter
		Hectare	Are		
1	2	3	4		5
1. SAADATNAGAR IQLA	385	0	00		20
	351	0	00		20
	350	0	00		20
	349	0	14		26
	339	0	00		71
	338	0	13		90
	337	0	03		32
	336	0	00		48
	334	0	00		36
	333	0	00		53
	331	0	12		11
	332	0	05		70
	309	0	00		71
	328	0	00		36
	308	0	01		78
	310	0	25		38
	302	0	48		37
	297	0	00		20
	298	0	05		70
	301	0	06		05
	299	0	05		35
2. DASNA	4356	0	12		96
	4353	0	11		52
	4352	0	03		20
	4350	0	07		64
	4351	0	00		48
	4348	0	07		56
	4349	0	06		12
	4347	0	10		44
	4345	0	01		92

Name of Village 1	Khasra No. 2	Area		
		Hectare 3	Are 4	Square Meter 5
	4183	0	00	72
	4182	0	02	16
	4181	0	00	84
	4121	0	20	52
	4120	0	06	12
	4113	0	15	84
	4112	0	12	24
	4114	0	11	88
	4105	0	00	72
	4103	0	04	20
	4102	0	10	62
	4101	0	01	20
	4097	0	03	78
	4099	0	00	72
	4100	0	07	56
	4098	0	02	10
	4048	0	02	16
	4046	0	00	90
	4009	0	00	54
	4010	0	00	36
	4007	0	24	12
	4008	0	23	94
	4005	0	00	54
	4003	0	13	32
	4002	0	08	28
	4001	0	00	20
	3995	0	00	72
	3996	0	00	36
	3991	0	16	92
	3992	0	10	80
	3993	0	00	90
	3989	0	02	10
	3987	0	09	90

Name of Village 1	Khasra No. 2	Area		
		Hectare 3	Are 4	Square Meter 5
	3953	0	01	98
	3943	0	23	40
	3945	0	01	08
	3946	0	20	88
	3948	0	00	20
	3949	0	05	76
	3950	0	18	72
	3952	0	01	44
	3844	0	00	90
	3845	0	03	36
	3846/4400	0	01	68
	3847	0	18	90
	3848	0	05	76
	3849	0	01	08
	3824	0	00	72
	3823	0	11	88
	3846	0	07	92
	3924	0	02	16
	3925	0	01	26
	3926	0	01	44
	993	0	28	80
	1106	0	04	32
	1099	0	00	30
	1100	0	05	40
	1096	0	04	68
	1095	0	13	32
	1113	0	03	24
	1119	0	04	68
	1117	0	17	64
	1122	0	00	36
	1123	0	00	36
	1124	0	00	54
	1125	0	00	40

Name of Village 1	Khasra No. 2	Area		
		Hectare 3	Are 4	Square Meter 5
	1132	0	07	20
	1181	0	14	58
	1127	0	00	20
	1130	0	18	36
	1128	0	04	32
	1082	0	01	80
	1081	0	11	88
	1137	0	01	44
	1138	0	02	16
	1139	0	33	84
	1218	0	03	24
	1219	0	01	44
	1220	0	02	16
	1225	0	16	56
	1227	0	10	08
	1242	0	01	26
	1280	0	01	44
	1281	0	01	08
	130	0	12	96
	129	0	01	08
	132	0	02	16
	133	0	10	80
	134	0	16	92
	124	0	00	36
	123	0	00	54
	121	0	06	12
	122	0	00	72
	103	0	02	56
	104	0	11	88
	105	0	00	54
	106	0	00	54
	108	0	06	12
	107	0	09	00

Name of Village	Khasra No.	Area		
		Hectare	Are	Square Meter
1	2	3	4	5
	111	0	00	72
3. RASULPUR SIKRAUDA	460	0	18	08
	426	0	14	79
	427	0	28	51
	428	0	12	83
	431	0	00	20
	432	0	00	20
	425	0	00	71
	411	0	00	36
	410	0	10	69
	409	0	00	20
	406	0	25	30
	363	0	00	36
	364	0	00	71
	268	0	09	62
	269	0	02	61
	267	0	00	20
	270	0	11	94
	272	0	13	54
	274	0	00	40
	273	0	12	91
	277	0	00	27
	287	0	00	48
	265	0	00	71
	266	0	00	27
	248	0	02	40
	261	0	17	99
	262	0	05	07
	260	0	00	99
	263	0	03	56
	259	0	16	75
	258	0	00	36
	257	0	00	89

Name of Village	Khasra No.	Area		
		Hectare	Are	Square Meter
1	2	3	4	5
4. SADARPUR	910	0	00	20
	909	0	00	24
	908	0	13	36
	907	0	07	12
	905	0	01	96
5. MATIYALA	633	0	28	27
	632	0	00	53
	635	0	02	93
	630	0	00	36
	629	0	24	94
	628	0	04	28
	627	0	17	71
	626	0	01	19
	636	0	05	35
	638	0	12	47
	637	0	00	71
	531	0	00	36
	530	0	09	43
	533	0	00	53
	540	0	22	10
	538	0	16	93
	537	0	01	11
	536	0	07	01
	542	0	00	36
	543	0	01	60
	535	0	00	53
	447	0	05	35
	436	0	09	98
	451	0	00	20
	448	0	00	53
	450	0	02	77
	449	0	00	77
	435	0	02	85

Name of Village	Khasra No.	Area		
		Hectare	Are	Square Meter
1	2	3	4	5
	428	0	06	32
	429	0	02	18
	430	0	09	63
	431	0	12	83
	417	0	27	44
	349	0	04	63
	332	0	00	20
	333	0	02	49
	348	0	28	66
	355	0	00	36
	354	0	00	53
	361	0	25	83
	15	0	06	42
	55	0	06	88
	38	0	00	80
	40	0	11	40
	43	0	00	59
	42	0	05	51
	41	0	25	30
	35	0	02	85
	31	0	16	39
	30	0	06	73
6. KANAUJA	789	0	00	71
	788	0	00	95
	787	0	29	84
	786	0	15	32
	784	0	00	20
	783	0	01	68
	782	0	02	67
	686	0	07	12
	687	0	04	93
	688	0	00	42
	689	0	08	19

Name of Village 1	Khasra No. 2	Area		
		Hectare 3	Are 4	Square Meter 5
	673	0	21	20
	683	0	00	36
	736	0	00	36
	672	0	00	36
	670	0	12	83
	669	0	00	36
	665	0	24	94
	666	0	00	20
7. DUHAI	1489	0	01	63
	1482	0	07	12
	1481	0	00	19
	1480	0	03	48
	1479	0	07	48
	1478	0	17	99
	1468	0	27	08
	1467	0	00	89
	1465	0	19	50
	1460	0	01	43
	1457	0	10	52
	1455	0	00	20
	1456	0	11	04
	1452	0	01	37
	1450	0	00	24
	1451	0	10	40
	1449	0	01	43
	1434	0	02	37
	1433	0	03	20
	1432	0	02	31
	1437	0	02	85
	1430	0	13	18
	1421	0	06	05
	1427	0	03	16
	1422	0	16	75

Name of Village	Khasra No.	Area		
		Hectare	Are	Square Meter
1	2	3	4	5
	1419	0	00	20
	1417	0	21	38
	1415	0	21	02

[F. No. L-14014/29/2006-G.P.]
S. B. MANDAL, Under Secy.

नई दिल्ली, 19 अप्रैल, 2007

का. आ. 1097.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 2064 दि. 19 मई 2006 द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में

मैसर्स रिलायंस इंडस्ट्रीज लिमिटेड के गोवा में उत्तरी/दक्षिणी अपतट में खोज ब्लॉकों और आन्ध्रप्रदेश में संरचनाओं से महाराष्ट्र राज्य में अहमदनगर जिले के विभिन्न उपभोक्ताओं तक प्राकृतिक गैस के परिवहन के लिए मैसर्स रिलायंस गैस ट्रान्सपोर्टेशन इन्फ्रास्ट्रक्चर लिमिटेड द्वारा एक पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन के लिए अपने आशय की घोषणा की थी;

और उक्त राजपत्र की प्रतियों जनता को तारीख 7 जुलाई 2006 को उपलब्ध करा दी गई थी;

और पाइपलाइन बिछाने के संबंध में जनता की ओर से प्राप्त आक्षेपों पर सक्षम प्राधिकारी द्वारा विचार कर लिया गया है और अनुज्ञान कर दिया गया;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात्, और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन का विनिश्चय किया है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है;

और, केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार द्वारा निहित होने के बजाए, सभी विलंगमों से मुक्त, मैसर्स रिलायंस गैस ट्रान्सपोर्टेशन इन्फ्रास्ट्रक्चर लिमिटेड, में निहित होगा।

अनुसूची

मंडल/तहसील/तालुक : कर्जत		जिला : अहमदनगर		राज्य : महाराष्ट्र
गांव का नाम	गट नंबर / सब डिविजन नं	आर औ यु अंजित करने के लिये क्षेत्रफल		
		हेक्टेयर	एयर	सी एयर
1	2	3	4	5
1) शेगुडवाडी	167/1 167/2 138/1 139 143/1	00 00 00 00 00	11 12 08 23 17	90 03 00 30 00
2) खातगांव	158	00	35	30
3) आंबीजळगाव	330/1 330/2 141 323 324/1 324/2 324/4 324/5 325 130 331	00 00 00 00 00 00 00 00 00 00 00	04 04 05 17 28 28 28 28 03 40 10	50 50 00 38 20 20 20 34 55 00 49
4) कोरेगाव	311 214/1	00 00	58 26	27 30
5) बेनवाडी	403/2 404 408/3 401 395 392/1 392/2 392/3 374/2	00 00 00 00 00 00 00 00 00	06 05 01 05 02 04 04 04 20	25 15 32 11 24 20 20 24 60
6) घेरवाडी	192/1 34 285	00 00 00	12 39 27	75 60 00
7) झूरगांव	475/1 475/2 476/1 476/2 477/1 477/2 479/1 479/2 485 486/1 486/2 486/3 486/4 487	01 00 00 00 00 00 00 00 00 00 00 00 00 00	05 7 07 33 04 04 06 06 43 10 10 10 14 32	30 50 00 80 75 75 00 00 20 00 00 00 00 80 20

1	2	3	4	5
8) पिंपळेवाडी				
	470/1/4	00	16	80
	470/1/5	00	20	70
	470/2	00	48	10
	गट नंबर 470 में रास्ता	00	05	00
	465	00	43	20
	467	00	45	60
	गट नंबर 467 और 462 के बीच का नाम	00	09	60
	462/2	00	50	40
	460/1	00	54	25
	460/2	00	54	25
	गट नंबर 460 में रास्ता	00	04	80
	456	00	40	80
	गट नंबर 460 और 397 के बीच का नाम	00	08	40
	397	00	52	20
	398/1	00	08	30
	398/4	00	09	30
	394/1	00	25	00
	393	00	38	00
	गट नंबर 393 में कॉनाल	00	04	80
	392	00	72	00
	391	01	00	80
	371/1	00	18	80
	371/2	00	37	80
	371/3	00	17	80
	373	00	84	80
	368	01	10	40
	गट नंबर 368 में कॉनाल	00	04	80
	366	00	85	90
	363	00	05	00
	362	00	21	60
	359	00	01	00
	361	00	18	00
	360	00	13	20
	326	00	12	00
	325	00	04	80
	324	00	10	80
	323	00	40	80
	322	00	14	40
	320	00	02	80
	319	00	03	00
	गट नंबर 319 और 305 के बीच का रास्ता	00	04	80
	301	00	01	00
	305	00	31	20
	गट नंबर 305 और 93 के बीच का नाम	00	12	00
	93/1	00	02	75
	93/3	00	00	50
	93/4	00	02	75
	92	00	67	00
	गट नंबर 92 और 83 के बीच का रास्ता	00	04	80
	83	00	88	80
	7	00	28	80

[फा. सं. एल-14014/55/2004-जी. पी.]
एस. बी. मण्डल, अवर सचिव

New Delhi, the 19th April, 2007

S.O. 1097.—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas, number S.O. 2064 dated: 19th May 2006, issued under sub-section (1) of Section 3 of the Petroleum & Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land, specified in the Schedule appended to that notification for the purpose of laying pipeline for transportation of natural gas from the exploration blocks in the Northern / Southern offshore of Goa and structures in Andhra Pradesh of M/s Reliance Industries Limited by M/s Reliance Gas Transportation Infrastructure Limited to various consumers of District Ahmednagar in the State of Maharashtra.

And whereas, the copies of the said Gazette notification were made available to the public on the 7th July 2006;

And whereas objections received from the public to the laying of the pipeline have been considered and disallowed by the Competent Authority:

And whereas the Competent Authority has under sub-section (1) of Section 6 of the said Act, submitted report to the Central Government;

And whereas the Central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the right of user therein;

Now, therefore, in exercise of the powers conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the land, specified in the Schedule, appended to this notification, is hereby acquired, for laying the pipeline;

And further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of user in the said land for laying the pipeline shall, instead of vesting in Central Government, vest, on this date of publication of the declaration, in M/s Reliance Gas Transportation Infrastructure Limited, free from all encumbrances.

Schedule

Mandal/Thesil/Taluk: Karjat		District: Ahmednagar		State : Maharashtra		
Name of Village	Gat No./Sub-division No.	Area to be acquired for ROU				
1	2	Hectare	Are	C-Are		
1) Shegudwadi	167/1	00	11	90		
	167/2	00	12	03		
	138/1	00	08	00		
	139	00	23	30		
	143/1	00	17	00		
2) Khatgaon	158	00	35	30		
3) Ambijalgaon	330/1	00	04	50		
	330/2	00	04	50		
	141	00	05	00		
	323	00	17	38		
	324/1	00	28	20		
	324/2	00	28	20		
	324/4	00	28	20		
	324/5	00	28	34		
	325	00	03	55		
	130	00	40	00		
	331	00	10	49		
4) Koregaon	311	00	58	27		
5) Benwadi	214/1	00	26	30		
	403/2	00	06	25		
	404	00	05	15		
	408/3	00	01	32		
	401	00	05	11		
	395	00	02	24		
	392/1	00	04	20		
	392/2	00	04	20		
	392/3	00	04	24		
	374/2	00	20	60		
6) Therawadi	192/1	00	12	75		
	34	00	39	60		
	285	00	27	00		
7) Durgaon	475/1	01	05	30		
	475/2	00	07	50		
	476/1	00	07	00		
	476/2	00	33	80		
	477/1	00	04	75		
	477/2	00	04	75		
	479/1	00	06	00		
	479/2	00	06	00		
	485	00	43	20		
	486/1	00	10	00		
	486/2	00	10	00		
	486/3	00	10	00		
	486/4	00	14	80		
	487	00	32	20		

1	2	3	4	5
8) Pimpalwadi	470/1/4	00	16	80
	470/1/5	00	20	70
	470/2	00	48	10
	Road in Gat No.470	00	05	00
	465	00	43	20
	467	00	45	60
	Nala in between Gat No. 467 & 462	00	09	60
	462/2	00	50	40
	460/1	00	54	25
	460/2	00	54	25
	Road in Gat No.460	00	04	80
	456	00	40	80
	Nala in between Gat No. 460 & 397	00	08	40
	397	00	52	20
	398/1	00	09	30
	398/4	00	09	30
	394/1	00	25	00
	393	00	38	00
	Canal in Gat No.393	00	04	80
	392	00	72	00
	391	01	00	80
	371/1	00	18	80
	371/2	00	37	80
	371/3	00	17	80
	373	00	64	80
	368	01	10	40
	Canal in Gat No. 368	00	04	80
	356	00	85	80
	363	00	05	00
	362	00	21	60
	359	00	01	00
	361	00	18	00
	360	00	13	20
	326	00	12	00
	325	00	04	80
	324	00	10	80
	323	00	40	80
	322	00	14	40
	320	00	02	80
	319	00	03	00
	Road in between Gat No. 319 & 305	00	04	80
	301	00	01	00
	305	00	31	20
	Nala in between Gat No. 305 & 93	00	12	00
	93/1	00	02	75
	93/3	00	00	50
	93/4	00	02	75
	92	00	67	00

1	2	3	4	5
8) Pimpalwadi (Contd.....)	Road in between Gat No. 92 & 83	00	04	80
	83	00	88	80
	7	00	28	80
	8	00	28	80
	9	00	31	50
	10	01	00	80
	15	00	16	00
	14	00	60	80
	Canal in Gat No. 14	00	04	80
	11	00	55	00
	12	01	34	70
9) Rakshaswadi Khurd	Road in between V. B. of Rakshaswadi Budruk and Rakshaswadi Khurd	00	02	40
	216/1	00	24	00
	216/2	00	24	00
	216/3	00	24	00
	217	01	23	60
	218	00	24	00
	260	00	33	60
	259	00	09	60
	262/1	00	22	50
	262/2	00	30	30
	265/1	00	13	35
	265/2	00	17	85
	268	00	16	80
	266/1	00	42	70
	266/2	00	19	70
	Canal in Gat No. 266	00	04	80
	272/2	00	55	20
	274/1/2	00	16	80
	273	00	22	80
	276	00	38	00
	Canal in between Gat No. 276 & 281	00	04	80
	281/1	00	22	20
	281/2	00	22	20
	281/3	00	22	20
	282	01	08	00
	283/1	00	07	00
	Road in between Gat No. 283 & 6	00	12	00
	173	00	02	00
	7	00	02	00
	6	00	62	40
	5	00	05	00
	1	00	07	20
	2	00	40	80

Mandal/Thesil/Taluk: Shrigonda	District: Ahmednagar	State : Maharashtra		
1) Taklikadewalit	437	00	02	00
2) Bhingaon	35/2	00	04	04
3) Kashti	191	00	61	00

[F. No. L-14014/55/2004-G.P.]
S. B. MANDAL, Under Secy.

अम और रोजगार प्रबंधन

नई दिल्ली, 22 मार्च, 2007

का.आ. 1098.—ऑटोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लिवेल एविएशन सर्विसेज के प्रबंधनत्र के संबद्ध वियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑटोगिक विवाद में केन्द्रीय सरकार ऑटोगिक अधिकरण, मुम्बई-II के पंचाट (संदर्भ संख्या 69/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-3-2007 को प्राप्त हुआ था।

[सं. एल-11012/22/2002-आई आर (सी-I)]

स्नेह लता जवास, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 22nd March, 2007

S.O. 1098.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2002) of the Central Government Industrial Tribunal Mumbai-II now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Livewel Aviation Services and their workmen, which was received by the Central Government on 21-3-2007.

[No. L-11012/22/2002-IR (C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.2, AT MUMBAI

PRESENT

A.A. LAD Presiding Officer

REFERENCE NO. CGIT-2/69 OF 2002

Employees in relation to the Management of:—

LIVEWEL AVIATION SERVICES

M/s. Livewel Aviation Services
Navjivan Society, 12th Floor
Office No. 6, Building No.3
Lamington Road, Mumbai Central
Mumbai-400 008.

AND

Their workmen

Shri Ashok Jagu Kunchikurve

Kamla Nehru Nagar

BMC No. 342

90 Feet Road, Dharavi

Mumbai 400 017.

APPEARANCE:

For the Employer : Ms. A. P. Purav Advocate

For the Workmen : Absent

Date of Passing of Award : 27th February, 2007

AWARD

1. The Government of India, Ministry of Labour by its Order No. L-11012/22/2002-IR(C-I) dated 11/09/2002 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of M/s. Livewel Aviation Services, Mumbai, in dismissing the services of Mr. Ashok Jagu Kunchikurve, an ex-helper with effect from 17th November, 2001 is legal and justified ? If not, to what relief the workman concerned entitled ?"

2. To support the sub matter referred in schedule second party filed Claim Statement at Ex-10 which is opposed by First Party by filing Written Statement at Ex-13 and issues framed at Ex-23 and matter was posted for evidence. However second party is not appearing since long to lead evidence. Hence the order :

ORDER

Reference is disposed of for want of prosecution.

Dated: 27-02-2007

A. A. LAD, Presiding Officer

नई दिल्ली, 22 मार्च, 2007

का.आ. 1099.—ऑटोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लिवेल एविएशन सर्विसेज के प्रबंधनत्र के संबद्ध वियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑटोगिक विवाद में केन्द्रीय सरकार ऑटोगिक अधिकरण, मुम्बई-II के पंचाट (संदर्भ संख्या 79/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-3-2007 को प्राप्त हुआ था।

[सं. एल-11012/24/2002-आई आर(सी-I)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 22nd March, 2007

S.O. 1099.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2002) of the Central Government Industrial Tribunal Mumbai-II now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Livewel Aviation Services and their workmen, which was received by the Central Government on 21-3-2007.

[No. L-11012/24/2002-IR (C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.2, AT MUMBAI

PRESENT

A. A. LAD, Presiding Officer

REFERENCE NO. CGIT-2/79 OF 2002

Employees in relation to the Management of:—

LIVEWEL AVIATION SERVICES

M/s. Livewel Aviation Services
Navjivan Society, 12th Floor
Office No. 6, Building No. 3
Lamington Road, Mumbai Central
Mumbai 400 008.

AND

Their workmen

Shri Bharat Suryakant Sonavane,
Dharavi Cross Road,
Gulmohammed Chawl No. 253/4
Room No.10, Dharavi,
Mumbai -00017.

APPEARANCE:

For the Employer : Ms. A.P. Purav Advocate
For the Workmen : Absent

Date of Passing of Award : 27th February, 2007

AWARD

1. The Government of India, Ministry of Labour by its Order No. L-11012/24/2002-IR(C-I) dated 07/10/2002 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of M/s. Livewel Aviation Services, Mumbai in dismissing the services of Mr. Bharat Suryakant Sonavane, helper with effect from 17th November, 2001 is legal and justified ? If not, to what relief the workman concerned entitled ?"

2. To support the sub mater referred in schedule second party filed Claim Statement at Ex-7 which is opposed by First Party by filing Written Statement at Ex-9 and issues framed at Ex-19 and matter was posted for evidence. However second party is not appearing since long to lead evidence. Hence the order :

ORDER

Reference is disposed of for want of prosecution.

Dated: 27-02-2007 A. A. LAD, Presiding Officer

नई दिल्ली, 23 मार्च, 2007

का.आ. 1100.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 981/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/353/94-आईआर(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 23rd March, 2007

S.O. 1100.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 981/2005) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Chandigarh as shown in the annexure, in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 22-3-2007.

[No. L-12012/353/94-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II
CHANDIGARH**

PRESIDING OFFICER: SHRI KULDIP SINGH

CASE NO. I.D. NO. 981/2005

Registered on 16-09-2005

Date of Decision 28-02-2007.

Tarvinder Singh, Clerk/Cashier, R/O House No. 2248
Sector-44-C, Chandigarh

—Petitioner

Versus

The Chief Manager Punjab National Bank, Sector-17-B,
Chandigarh

—Respondent

APPEARANCE

For the Workman : Shri Naveen Malik

For the Management : Shri Rajesh Gupta

AWARD

The following reference was received from Government of India, Ministry of Labour vide their letter No. L-12012/353/94 dated 3rd April, 1995 :—

"Whether the action of the management of Punjab National Bank, Chandigarh in dismissing Shri Tarvinder Singh, Clerk-cum-Cashier from service w.e.f. 25th Dec., 1993 is legal and justified ? If not, to what relief the workman concerned entitled ?"

The reference was registered in this Tribunal and the notices were issued to the parties who appeared through their representatives. The workman filed his Claim Statement, the Management their Written Statement and opposed the claim of the workman. The workman filed the replication and claimed that the objections raised by the Management are without any merit. He also opposed the prayer of the Management for the exercise of powers under Section 11-a of the Industrial Dispute Act, 1947, hereinafter to be referred as "Act". The workman filed his affidavit and the Management that of Shri K.K. Manaktala, Senior

Manager as their witness. They also filed the affidavit of Shri Dalbir Singh, Senior Manager. Both the parties produced the photo copies of a number of documents. The Management placed on record photo copy of the proceedings of the domestic inquiry. Since the Management has taken the Plea that the action against the workman was taken on the basis of domestic inquiry and the workman has claimed that the inquiry held against was not fair and proper, therefore, it was directed to the parties to address the arguments on the point of fairness of inquiry proceedings. Both the parties have submitted Written Arguments. They have also supported their respective claims with the law laid down by the different High Courts of the Country and the Hon'ble Supreme Court of India.

I have heard the parties and have also gone through the file.

The workman has stated his case in the Written Arguments. In brief his case is that he was working as a Clerk-cum-Cashier in the Management Bank, in their Branch at Sector-17-B, Chandigarh; that the Chief Manager posted in that Branch suspended him on 17th Sept., 1992, vide his letter No. SDF/92 dated 17th Sept., 1992. He was Charge Sheeted by him vide letter No. 3666/SDF 92 dated 19th Dec., 1992. The charges against him were that while working as a cashier he received an amount of Rs.876 on 6th Feb., 1991 from one Tejjit Singh for depositing in Saving fund account No. of Housing Board, Chandigarh, but he did not deposit the said amount in the books of the Bank. Similarly on 17th Feb., 1986 he received an amount Rs.606-50 from one Ranjit Singh Bedi, for depositing the same in Account No. 46453 of Chandigarh Housing Board. He issued the counter file, but did not account for that amount in the Books of the Bank. The 3rd charge is that he destroyed the long book of the bank so as to avoid the detection of fraud committed by him. Thereupon the Disciplinary Authority ordered the departmental inquiry against him which started from 20th May, 1993. The workman was exonerated from all the three charges but the Disciplinary Authority, the Chief Manager, did not agree with the findings and a show cause notice issued to the workman proposing the extreme penalty of dismissal. According to the workman, the Disciplinary Authority had relied upon the undertaking given by the workman, but that undertaking was given under intensive pressure and police threats. The Disciplinary Authority dismissed the workman from service on 29th Dec., 1993. The further case of the workman is that he had filed an appeal, before the Zonal Manager, but the same was also rejected and it was only in that contingency that he approached to the ALC and the Hon'ble High Court.

The further case of the workman is that the Branch in which he was posted was exceptionally large Branch, headed by an Assistant General Manager. According to Clause 19.14, of the Bi-partite Settlement dated 19th October, 1996, in such a Branch only the AGM/Chief Manager was competent to appoint the inquiry officers

and the Inquiry Officer could be any officer with the concurrence of Regional Manager. The Zonal Manager was to be the Appellate Authority. Contesting the claim of the Management that where Chief Manager is posted as second man, the Inquiry Officer could be engaged by the AGM and the Chief Manager could be competent to appoint the Inquiry Officer only in the case of very large Branch and not in the case of exceptionally very large Branch. Since the action against the workman was initiated by Chief Manager, who was not competent to do it, therefore, all actions taken in the matter became vide ab initio. The Disciplinary Authority exercised the powers which were not vested in him, therefore, all his actions including placing the workman under suspension, serving him the charge sheet, appointment of Inquiry Officer and issuance of show cause notices, were all bad in the eyes of law, therefore, all those action are required to be quashed. In support of his claim he has relied upon the judgments, in the case of Nasib Chand Vs. State Bank of Punjab and others reported in RCJ 1990 (2) Page 783, and Hardwari Lal Vs. Chancellor MDC reported as SLR 1980 (2) Page 514. The next ground of claim of the workman is that since he was exonerated in the Inquiry, therefore, the action of the Disciplinary Authority, Chief Manager is not justified. The findings of the Disciplinary Authority in awarding him the extreme penalty of dismissal was bad in law and not supported by any evidence on record. Moreover the disagreement of Disciplinary Authority with the Inquiry Officer was not conveyed to the workman. For that reasons also the action of the Management was bad in law. In support of his claim he has also relied upon the judgements reported as State of Rajasthan Vs. Jagmohan Singh, SLR 2003(3) Page 605, Triloki Nath Vs. Delhi Power Court SLR 2003 (3) Page 88 and Punjab National Bank and others Vs. Shankari Parshad reported as AIR 1998 Page 2713 (Supreme Court).

The workman further claimed that the Management did not show him the Cashier's long book and other documents, lying in their possession. They also did not show their documents to the workman including vouchers dated 7th Feb., 1986 and 6th Feb., 1999. The Management has also failed in its duty when relied upon the undertaking given by the workman, which he had given under pressure and against which he had raised cries. According to him the undertaking was taken under pressure in presence of police and he was threatened. As a result of threat, the workman has gone to the hospital. Even otherwise the Management failed to prove the allegation against the workman. His signatures in the counter file were not proved. The complainant also could not identify the workman. Regarding the 3rd charge, he stated that the Cashier long book is with the Management, and they did not produce the documents and, therefore, the action against the workman was bad. In support of his claim he has relied upon the authority reported as Ahmed Mohamid Vs. State Bank of Haryana reported as 2003 (5) Page 668. In the end

the workman has claimed that the action of the Management was bad in law, therefore, his dismissal from service is required to be quashed. He has prayed for reinstatement in services the payment of back wages and all consequential service benefits alongwith interest at the rate of 18% p.a, on the amount found due to him. In support of this he has relied upon the judgement in the case of Kishore S.Kaser Vs. S.Kumar reported as SLR 2003 (3335).

The case of management is that as per the P.D. Circular No.1012 dated 13th April, 1987 the Chief Manager was Disciplinary Authority besides the assistant General Manager in an exceptionally large Branch, therefore, the Chief Manager was competent to suspend the workman, issue charge sheet against him and to appoint an Inquiry Officer besides to impose the punishment on him; that in this case the workman was charge sheeted for having misappropriated the money he received from different account holders and for issuing false receipts. The workman admitted his guilt by giving an undertaking. In view of that the Disciplinary Authority was justified not to agree with the report of the Inquiry Officer. The Disciplinary Authority came to his own conclusions and justified the same with reasoning, therefore, the punishment awarded was legal. The Disciplinary Authority has given show cause notice to the workman before awarding him the punishment and had also given him personal hearing. He was also provided with defence Representative, during the Domestic Inquiry. The workman filed an appeal and on the basis of the record the Appellate Authority did not find any reason or justification to interfere with the finding of the Disciplinary Authority. He confirmed the same. The proceedings were done in terms of the Bi-partite Settlements and the principles of natural justice were followed. According to the Management the punishment awarded to the workman was justified and legal, therefore, the reference may be answered against him.

I have considered the submissions made by the parties and have also gone through the record.

The workman has challenged the fairness of the Inquiry primarily on two counts. His claim is that the Chief Manager, who acted as Disciplinary Authority, placed him under suspension served the charge sheet on him, appointed the Inquiry Officer and awarded him the punishment of dismissal, was not competent to do. Therefore, the whole of the edifice, based on his orders, is illegal and it should crumble down forthwith. The other claim of the workman is that in the inquiry, the charges were not proved against him and the action of the Disciplinary Authority was bad so as he disagreed with the Inquiry Officer and gave his own findings. The workman has reproduced clause 19.14 of the Bi-partite Settlement dated 19th October, 1996. As per this clause in an exceptionally/very large Branch, the AGM/Chief Manager were designated as Disciplinary Authority. Any officer of the Bank could be appointed as an Inquiry Officer with the

concurrence of the Regional Manager and the Zonal Manager was the Appellate Authority. The workman has taken the plea that since in between the word "exceptionally" and "very large", there is a slash and so is in between AGM/Chief Manager, in the next column, therefore, it meant that for exceptionally large Branch the AGM was the Disciplinary Authority and in the case of very large Branch the Chief Manager could be the Disciplinary Authority. This interpretation, to my mind is not correct. Had the Authority, framing the Bi-partite Settlement, this in mine they would have shown the two type of Branches by different columns instead of showing in the same column. What this entry apparently means is that either of the two authorities could be the Disciplinary Authority in either of the two Branches. There is another angle to look at it. In the case of both type of Branches the Appellate Authority is shown to be the Zonal Manager. If the Disciplinary Authority was Chief Manager, only in the case of very large branch, then in that case there is no bar for an AGM to be the Appellate Authority. This shows that the drafters of the Bi-partite Settlements of 1996, consciously provided alternative in the Disciplinary Authority in the case of both exceptionally/very large Branches for initiating proceedings against any delinquent officials posted in that Branch. The argument of the workman is, therefore, of no merit and is rejected.

There is also no merit in his submission that since the Inquiry Officer had not found any of other charges proved against the workman, therefore, the Disciplinary Authority could not award him the punishment, by coming to his own conclusions. If this argument is accepted then the authority of the Disciplinary Authority is reduced to mere a rubber stamp. Before awarding the punishment, to an official, the Disciplinary Authority is required to apply his mind, after going through all the evidence available. It is not always that if the Inquiry Officer holds the delinquent official guilty of the misconduct that the Disciplinary Authority agrees with him. It could be vice versa. Otherwise the authority of the Disciplinary Authority would be meaningless. There are instances where the Appellate Authority did not agree with the punishment awarded by the Disciplinary Authority which also means that both the Disciplinary Authority and Appellate Authority are expected to apply their mind independent of their opinion of Inquiry Officer and the Disciplinary Authority. In this case if the Disciplinary Authority disagreed with the report of the Inquiry Officer as the workman had admitted to guilt he was competent to do it. The authorities referred to by the workman in my opinion are not helpful to him in the circumstances of the case.

In a domestic inquiry the powers of this Tribunal are limited to the extent to see whether the Inquiry Officer the Disciplinary Authority and Appellate Authority had conducted themselves in a manner which does not raise a doubt that they were not fair in considering the matter. The

photo copy of the inquiry proceeding is on record. The workman has failed to show me as to where the Inquiry Officer or the Disciplinary Authority failed in their duty holding the inquiry, fairly and properly. As per record the workman was served with the charge sheet and he submitted his reply thereto. The Management provided the list of the documents, they proposed to use, against the workman during the inquiry. During the inquiry Shri D.K. Chaudhary representing the workman cross-examined the witnesses. The Management produced witnesses and also proved the documents. The workman has failed to show from their statements that he did not have the sufficient time to cross examined the witnesses or that his questions were not allowed by the Inquiry Officer or that he was not given full opportunity to cross examine the witnesses. The workman has, therefore, failed to show that the inquiry conducted against him was not fair and proper. It has been laid down by the Hon'ble Supreme Court in the case, reported as 1999(SCT) 642 that "in department proceedings the Disciplinary Authority is the sole judge of the facts and in case the appeal is presented to the Appellate Authority, the Appellate Authority has also the powers and jurisdiction to reappreciate the evidence and come to its own conclusion on facts, being the sole fact finding authorities. Once finding of the facts, based on the evidence are recorded the High Court, in writ jurisdiction may not normally interfere with those factual findings, unless it finds that the finding recorded are perverse and are legally untenable. The adequacy or inadequacy of evidence is not permitted to be canvassed before the High Court". Same is the position before the Tribunal.

In the present case the workman failed to show that the findings arrived at by the Disciplinary Authority was perverse and not based upon the facts. He has also failed to show that the punishment awarded to the workman was disproportionate to the misconduct alleged against him. How a financial institution can retain in service an employee who misconducts himself and does not account for the money he receives from the Accounts Holders and issues false receipts, thereby effecting the very trust a depositor imposes in the financial institution.

After going through the record and consideration of the submissions made by the parties I am of the opinion that the action of the Management in dismissing Shri Tarvinder Singh, Clerk-cum-Cashier from service w.e.f. 25th December, 1993 was legal and justified. Therefore, the workman is not entitled to any relief. The reference is answered against him. Let a copy of this award be sent to the appropriate govt. for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 26 मार्च, 2007

कर.आ. 1101.—ऑफिशियल विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के

प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण/अम न्यायालय, अनान्तराल के पंचाट (संबंध संख्या 10/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/39/2004-आई आर.(भी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th March, 2007

S.O. 1101.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the management of Canara Bank and their workmen, received by the Central Government on 23-3-2007.

[No. L-12012/39/2004-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT

Shri P.L. Norbert, B.A., LL.B., Presiding Officer

(Thursday the 15th day of March, 2007/24th Phalguna, 1928)

I.D. 10/2006

(I.D. 16/2004 of Labour Court, Ernakulam)

Workman : Smt. E.V. Lalitha, Eriyattil House, Kaipamangalam, Trichur-680 681

Adv. Shri Ranjith Thampam

Management : The General Manager, Canara Bank, Section P and I Wing, Head Office, 112, J.C. Road, Bangalore-560 002

Adv. Shri R.S. Kalkura

AWARD

This is a reference made by Central Government under Section 10(1)(d) of Industrial Disputes Act, 1947 for adjudication. The reference is:

"Whether the management of Canara Bank is justified in terminating the services of Smt. E.V. Lalitha? If not, what relief is the concerned workman entitled to?"

2. The facts of the case in brief are as follows:—

The claimant, Smt. E.V. Lalitha was working in Kaipamangalam branch of Canara Bank as part-time

sweeper in leave vacancy from 18-9-1989 onwards. While so, on 31-5-2002 a permanent vacancy arose in the post of part-time sweeper. The claimant worked in that vacancy till 15-12-2003. She had put in more than 500 days' work continuously as part-time sweeper. It is the practice of Canara Bank to engage part-time sweepers on casual basis and absorb them considering their long service. The claimant was legitimately expecting regularization in service. In December, 2003 the management attempted to terminate the services of the claimant and recruit a temporary hand from employment exchange. The claimant was not given a notice of retrenchment. The union intervened and there was a conciliation between the bank and the union before the Assistant Labour Commissioner (Central), Ernakulam. In pursuance to the conciliation the bank permitted the claimant to continue to discharge the duty of part-time sweeper. But the bank before the conciliation officer took the stand that they will recruit a temporary hand from the employment exchange as sweeper. The action of the management in recruiting a person from the employment exchange and terminating the service of the claimant is in violation of the provisions of I.D. Act. The claimant has worked continuously for more than 500 days. The management in their reply statement contended that it is the usual practice for a permanent part-time employee to make alternate arrangement whenever such employee is on leave. The claimant is the daughter of Smt. Ammini who was a permanent sweeper of the bank. Whenever Smt. Ammini was on leave she used to engage her daughter for sweeping purpose. Thus the claimant was working in the leave vacancy from 18-9-1989 onwards. Smt. Ammini retired on 31-5-2002. The claimant made a representation to the bank seeking appointment in the permanent post of part-time sweeper. Her representation was examined by the bank. But she did not conform to the prescribed recruitment norms. Hence her candidature could not be favourably considered. A panel of candidates from employment exchange was called and one of them was selected for the post of part-time sweeper. The claimant was never appointed or recruited in any permanent vacancy by the bank. She has not acquired any right for a permanent post. The claimant is not an employee of the bank and there is no employer-employee relationship between the parties. Hence there is no existing industrial dispute.

3. In the light of the above contentions the following points arise for consideration :

- (1) Whether the claimant was terminated from service? If so, is it legal?
- (2) Reliefs.

The evidence consists of the oral testimony of WW1 and Exts. W1 to W10 on the side of workman and MW1 and Exts. M1 to M6 on the side of management and Court Exts. XI & X2.

4. Point No. (2) :

It is an admitted fact that Smt. Lalitha was a part-time sweeper working in leave vacancy of a permanent part-time sweeper in Kaipamangalam branch of Canara Bank from 18-9-1989 onwards. It is also admitted by the management that the permanent part-time sweeper, Smt. Ammini retired from service on 31-5-2002. Thereafter in December, 2003 a panel of candidates was called from employment exchange and one of them was selected for the post of part-time sweeper. There is no doubt that the claimant continued to work even when a permanent vacancy arose on 31-5-2002 till 15-12-2003 when an employment exchange hand was selected. However, according to the management, the claimant was never appointed and she was never terminated. They contend that the claimant was working in leave vacancy for which arrangement was made by the permanent part-time sweeper. When the Senior Manager of the bank, MW1 was cross-examined he admitted that a permanent vacancy arose on 31-5-2002 when Smt. Ammini, permanent PTS retired. He further admits that the claimant, Smt. Lalitha worked in the permanent vacancy continuously for more than 500 days from 31-5-2002. It is also admitted by him that in December, 2003 a part-time sweeper was selected out of the panel of candidates supplied by Employment Exchange and she was appointed and worked in the bank for 28 days. Meanwhile the claimant had raised an industrial dispute before ALC(C), Ernakulam and conciliation was conducted. The ALC(C) directed the management not to alter the service conditions pending the industrial dispute. Hence the employment hand was relieved of her duties after 28 days of her engagement. Thereafter, again the claimant was allowed to continue to work as part-time sweeper in the permanent vacancy. However he reiterates that the claimant was never terminated by the bank and she continues to work even now. However the bank does not admit that she is working in a permanent vacancy, but in leave vacancy and the bank has no objection in so continuing in service.

5. It is to be noted that in the reply statement the bank has admitted that in December, 2003 an employment hand was recruited. Ext. W3 is a copy of the reply statement filed by the management before ALC(C). There in paragraph 4 it is admitted that an employment exchange hand was selected and appointed as regular part-time employee in the permanent vacancy of PTE at Kaipamangalam branch. It is also stated that there is no employer-employee relationship between the claimant and the bank. Ext. M 1 is a letter from the employment officer to the management regarding the submission of panel of candidates for the post of part-time sweeper. Ext. M2 is the list of candidates supplied by Employment Exchange. Thus the fact that an employment exchange hand was selected and appointed is beyond any controversy. Ext. XI is photostat copy of Daily Wages Paid Register and Ext. X2 is photostat copy of

records showing the payment of bonus to workman. These two documents show that Smt. Lalitha, the claimant was paid wages on daily wage basis and was also paid bonus for the period from 1992-93 to 2004-05. Besides, as has already been mentioned, MW1 has admitted that the claimant has been working from 31-5-2002 in a permanent vacancy of PTE. That continued till 15-12-2003. Thereafter there was a break of 28 days during which an employment exchange candidate was appointed. Thereafter the claimant is continuing as PTE in the permanent vacancy. The contention of the management that the claimant was never appointed and she was never terminated from service is not correct. It is true that no appointment order is given to her. But she has been working in permanent vacancy from 31-5-2002 onwards continuously for a period of more than 500 days till 15-12-2003, which is not disputed. If so, she is a 'workman' within the definition of S-2(s) entitled to the benefits under S-25F of I.D. Act. The contention of management that she was working in leave vacancy all along, cannot be correct. Prior to 31-5-2002, no doubt, she was engaged in leave vacancy only. When a permanent hand is recruited there is no room for a casual part-time sweeper. Even if the bank allows the casual worker to continue, he/she can continue only in leave vacancy and not in a permanent vacancy. Having worked for more than 240 days prior to 15-12-2003, when her engagement was stopped she had already acquired the status of a 'workman' within the definition of S-2(s) and the benefits u/s-S-25F of I.D. Act. That position cannot be altered by the management. The management is trying to deprive the claimant of her legitimate rights under I.D. Act by taking a contention that she can continue to work in leave vacancy. That was not the status she was enjoying prior to her termination or disengagement on 15-12-2003. She could have been sent away from service only after issuing a notice and giving compensation under S-25F of I.D. Act. If that is not done then she is entitled to be reinstated in the same position as she was prior to her termination on 15-12-2003. The contention that the claimant was never terminated, cannot be accepted as the action of the management in selecting another candidate sponsored by Employment Exchange tantamount to termination of the casual PTE. However after 28 days the claimant was allowed to continue and even now she is working in the permanent vacancy of PTE. Therefore, at present there is no existing dispute. Suffice to say that if the bank wants to terminate her they can do so only in accordance with the procedure under the provisions of I.D. Act.

6. Though during evidence and argument the learned counsel for the worker contended that the worker is entitled to be absorbed in service as the bank has a practice of absorbing casual workers who have put in long service, the reference is only with regard to the legality of termination of service. The question of absorption is not a term referred for adjudication and that question cannot be dealt with in the present case.

7. For the reasons stated above, I find that though the worker was terminated on 15-12-2003 and it was not in compliance with the provisions of I.D. Act, since after 28 days she was allowed to continue in service, at present there is no existing dispute. Point is answered accordingly.

8. Point No.(2): (See Award portion).

9. In the result, an award is passed finding that the termination of service of Smt. E.V. Lalitha on 15-12-2003 was not legal. However, in view of the fact that she was taken back after 28 days of break and she is continuing even now in service, there is no existing industrial dispute and the claimant is not entitled for any relief. However it is made clear that if the management intends to terminate the service of the claimant they can do so only in accordance with the provisions of I.D. Act. The parties will suffer their respective costs. The award will take effect one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 15th day of March, 2007.

P.L. NORBERT, Presiding Officer
APPENDIX

Witness for the Workman :

WW 1—Shri C.D. Josson

WW 2—Smt. E.V. Lalitha

Witness for the Management :

MW 1—Shri B. Hari

Exhibits for the Workman :

W 1—Photostat copy of medical certificate dated 15-11-2000 issued to Smt. E.V. Lalitha.

W 2—Photostat copy of representation dated 15-12-2003 submitted by the workman before ALC(C).

W 3—Photostat copy of reply statement dated 12-1-2004 filed by management before ALC(C).

W 4—Photostat copy of rejoinder dated 21-1-2004 filed by the workman before ALC(C).

W 5—Photostat copy of proceedings of the joint discussion held before ALC(C) dated 13-1-2004.

W 6—Photostat copy of Award in I.D. 4/2005 & I.D. 5/2005 of CGIT-cum-Labour Court, Ernakulam dated 30-12-2005.

W 7—Photostat copy of Award in C.R. 3/2004 and C.R. 4/2004 of CGIT-cum-Labour Court, Ernakulam dated 30-11-2005.

W 8—Photostat copy of Circular dated 23-12-1993 issued by Canara Bank Head Office.

W 9—Photostat copy of Circular No. PW PM ; 6099 ; 38 : NKB dated 5-10-2000.

W 10—Photostat copy of authorization letter of the workman dated 13-1-2003.

Exhibits for the Management:

M 1—Photostat copy of letter dated 24-10-2002 issued by Employment Officer, Kodungallur to Canara Bank.

M 2—Photostat copy of list of applicants issued by Employment Officer on 2-7-2003.

M 3—Photostat copy of Minutes of the Joint Conference held with union and management on 8-6-2000.

M 4—Photostat copy of Circular No. PWPM : 6099 : 38 : NKB dated 5-10-2000 and guidelines.

M 5—Photostat copy of Circular No. PWPM : 9492 : 38 dated 23-12-1993 and guidelines.

M 6—Photostat copy of Circular dated 23-12-1993 and guidelines.

Exhibits for the Court:

X 1—Photostat copy of Daily Wages Paid Register.

X 2—Photostat copy of records showing payment of bonus to the workman for the period 1989 to 2004.

नई दिल्ली, 26 मार्च, 2007

का.आ. 1102.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/ श्रम न्यायालय पूणे के पंचाट (संदर्भ संख्या 27/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/36/2001-आईआर(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th March, 2007

S.O. 1102.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 27/2001) of the Industrial Tribunal Pune (Maharashtra) as shown in the Annexure, in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 26-3-2007.

[No. L-12012/36/2001-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI S.S. VYAVAHARE, INDUSTRIAL
TRIBUNAL, ATPUNE.**

Reference (IT) No. 27/2001.

Between :

The Zonal Manager,
Bank of India,
1162/6, Shivajinagar,
University Road,
Pune : 411 005.
.... First Party

And :

Shri. S.G. Dhumal,
D/8, Kasturba Housing Society,
Vishrantwadi,
Punc : 411 015. Second Party

APPEARANCES:

Shri. Khandekar, Advocate for the First Party.
Shri. Malegaonkar, Advocate for the Second Party.

AWARD ON PRELIMINARY POINT

1. In exercise of the powers conferred by Clause (d) of sub-Sec. 1 and sub-sec. (2a) of Sec. 10 of the Industrial Disputes Act, 1947 under Secretary of the Central Government has referred the above referred dispute to the undersigned for its disposal according to law.

2. After the receipt of the reference, the notices were issued to the parties to the reference. Exhibit U-4 is a statement of Claim filed by the Second Party. Whereas Exhibit E-2 is the Written Statement.

3. It is seen from the Statement of Claim of the Second Party that, admittedly, in the year 1984 he was promoted as a Branch Manager at Akluj, District : Solapur. It is also not disputed that, the Second Party was served with a chargesheet dt. 24-3-95 and the allegation of fraud and forgery were levelled against Second Party. The Second Party has undergone the disciplinary enquiry. The Enquiry Officer has held the Second Party guilty for the misconduct levelled against him. Simultaneously, the chargesheet was also issued against the Second Party in the Court of J. M. F. C., Pune. Admittedly, the Second Party was acquitted from the charges of fraud and forgery though he was held guilty for the misconduct levelled against him by the Enquiry Officer. By accepting the findings of the Enquiry Officer, the First Party has passed dismissal order against the Second Party which the Second Party has challenged before the Conciliation Officer. The Second Party has claimed reinstatement with continuity of service and backwages.

4. The First Party resisted the claim contending that, the claim of reinstatement of the Second Party is not basically tenable for the want of status of Second Party as a workman U/s. 2 (s) of the Industrial Dispute Act. According to First Party, the Second Party was working as a Manager and was doing administrative and supervisory work. While justifying the dismissal of the Second Party, the First Party submits the Second Party was involved in a serious misconduct of fraud. By preparing, false document, in the name of fake persons, the Second Party has committed fraud of Rs. 5,82,794. 50 ps. Second Party has also admitted this guilt and therefore, considering the gravity of misconduct, the punishment of dismissal was properly awarded.

5. According to First Party, the Second Party was given full opportunity to participate in the enquiry and the enquiry conducted against the Second Party was fair,

proper and as per the principles of natural justice. The First Party therefore, prays for rejection of award.

6. On respective contentions of the parties, my learned predecessor has framed issues at Exhibit 0-3.

They are as under :—

ISSUES	FINDINGS
(1) Whether Party No. 2 is 'workman' U/s. 2 (s) of I. D. Act ? No.
(2) Whether enquiry conducted against Party No. 2 is fair and proper and	
Conducted as per principles of natural justice ? Yes
(3) Whether order of dismissal of Party No. 2 dt. 30-4-97 is legal ? Does not serve
(4) If so, what order as to reference in question ? As per final order

7. REASONS :

My learned predecessor has framed Issue No. 2 as a preliminary issue. Therefore, before recording the finding on Issue No. 2, the evidence of Second Party came to be recorded. While recording affirmative finding on Issue No. 2, it has been held that, the domestic enquiry conducted against Second Party was legal, fair and proper.

8. Parties to the dispute have admitted the evidence be recorded on Issue No. 1 about the status of the workman as said issue also goes to the root of the matter. Therefore, with the consent of both, parties, before deciding Issue No. 3, the parties to the dispute were called upon to adduce evidence. Both the parties accordingly, adduced evidence about the status of Second Party.

9. In order to show the status of Second Party as a 'workman' the evidence of Second Party was recorded at Exhibit UW-1. While describing his nature of work, he has stated on oath that, as an Officer he was carrying out ledger posting, cheque posting, counting the cash. According to him, his nature of work are clerical in nature. According to him, as an officer he did not sanction leave of any employee, did not hold disciplinary action, did not inflict punishment to any employee and therefore, he is a workman U/s. 2 (s) of the I.D. Act. In support of his oral evidence, he has filed on record his enquiry proceeding.

10. As against this, the First Party has adduced the evidence of Shri Hemant Panditao at Exh. CW-1, who states that, from Aug. 1987 to Dec. 1988 the Second Party was working as a Manager at Akluj, Dist. : Solapur. As a Manager, the Second Party was sanctioning the leave, was sanctioning loan to the customers. 5 to 6 employees were working under his control and he was over-all incharge of the management. This witness also states that, the Second Party being in Officer cadre, his service conditions are

governed by Bank of India Service Regulations, 1979 and Bank of India Officer's Conduct Regulation, 1976. The Second Party has given declaration of his property every year which is required condition for the cadre of officer. According to this witness, the Second Party was not doing clerical work.

11. After going through the respective cases put forth by the parties, in order to consider the status of the Second Party as a 'workman', it is seen that, Sec. 2 (s) of the I.D. Act which defines 'workman' says that,

"Sec. 2 (s) 'workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute; any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950 or the Navy Act, 1957; or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who being employed in a supervisory capacity draw wages exceeding one thousand six hundred rupees per mensem or exercise either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

11. A person cannot be assumed to be a workman on the ground that, he does not come in 4 exceptions of Sec. 2 (s) of the I.D. Act. The specification of 4 types of work in the definition of Sec. 2 (s) obviously is intended to lay down that an employee is to be a workman only if he is employed to do the work or one of those types, while there may be employees who not doing any such work would be out of the scope of the workman without having resort to the exception.

12. The landmark judgement for deciding the status of an employee as a 'workman' is in the case of UNION CARBIDE Vs. RAMESH KUMBLA (reported in 1999 (I) C.L.R. P. 193) wherein the Hon'ble Lordship of the Bombay High Court has given some test which have been emerged from the ratio laid down by the various judgements of the High Court and Apex Court. I would like to reproduce those case as under :—

- (1) It is the dominant purpose of the employment that is relevant and not some additional duties which may be performed by an employee.

- (2) It is not the designation of the post held by the employee which is relevant but, what is relevant is the nature of duties performed by an employee.
- (3) The Court has to find out whether the employee can vind the company in the matter of some decision taken on behalf of the company.
- (4) What is the nature of supervisory duty performed by employee? Do they include directing the subordinate to do their work and to observe their performance.
- (5) Does the employee have power to recommend or sanction the leave of the workman.
- (6) Does he has power to take disciplinary action against the workman, working under him.
- (7) Does he has power to assign the duties and distribute the work.
- (8) Does the employee has the authority to indent material and to distribute the same amongst the workmen.
- (9) Does the employee has any workman working under him and does he write his confidential report.

13. From the above test laid down by the Hon'ble Lordship of the Bombay High Court, from the various judgement of the Apex Court and High Court, it is crystal clear that, while considering the status of a workman as an employee, atmost importance is given to main and substantial duty and to see whether the employee has any power to take decision which has a binding effect on the employer. It is also crystal clear that, mere designation or nomenclature of the post is not the decessive test to decide the status of an employee as 'supervisor' or 'workman'.

14. This being the Bank matter, Shri. Malegaonkar, learned Counsel for the Second Party has submitted before me that, parameters for deciding the status of an employee as a Supervisor in industrial dispute cannot be made applicable while resolving the dispute in banking concern. With due respect to the submissions advanced by Shri Malegaonkar, I do not accept his submission because the judgement of Bombay High Court relied on by him in the case of SUNITA VATSARAJ Vs. KARNATAK BANK (reported in 1999 (I) C.L.R. Pg. 1156) has a reference of the earlier judgement of Bombay High Court in the case of Union Carbide Vs. Ramesh Kumbla (cited supra) in which the test as referred above have been discussion by the Hon'ble Lordship of the Bombay High Court. In the case of SUNITA VATSARAJ (cited supra), the Hon'ble Lordship of the Bombay High Court have observed and held that, the petitioner who was appointed as a trainee Clerk in 1971 was promoted in officer grade III in 1978. While working on promotion at Bandra branch, for a month as a Branch Manager a power of attorney was executed in her favour. The petitioner had undergone the disciplinary enquiry and was subsequently dismissed. While deciding the nature of duties of the petitioner, the Hon'ble Lordship of the

Bombay High Court has held the petitioner as a 'workman' by holding her nature of work as clerical like other Clerks working with her. Shri Malegaonkar, learned Counsel for the Second Party heavily relying on the said judgement has submitted before me that, in present case also though the Second Party was promoted as an Officer, the witness of the Second Party has admitted in his cross-examination that, after 1988 till the end of service, the Second Party was not working as a Manager and after 1988 Shri Gajbiye, Makandar, Paugi, Gaikwad and Kendre were not working under the control of Second Party after 1988. It is also submitted by Shri Malegaonkar that, after 1988 the Second Party did not sanction leave of any employee. It is also submitted that, the witness of First Party has admitted that, in case of disbursement of loan, the loan proposal is verified independently by the Bank. According to Shri Malegaonkar, in present case even the duty list of the Second Party was not filed on record. The absence of which by any stretch of imagination, the status of Second Party cannot be decided as Supervisor or Manager.

15. The reliance is placed on the judgement of S.C. in the case of All India Reserve Bank Employees Association Vs. Reserve Bank of India (reported in A.I.R. 1966 S.C. Pg. 305) wherein, the Hon'ble Lordship of the S.C. have held that, the status of an employee as a supervisor is a question of fact or mix question of facts and law. It is further observed that, the work in banking industry involves layer upon layer of checkers and checking is hardly supervision. Therefore, the importance was given by the Hon'ble Lordship of the S.C. to see whether there was any power of assigning duties and distribution of work to the employees.

16. Therefore, according to Shri Malegaonkar, the First Party has failed to prove the status of Second Party as a supervisor. On the contrary, after 1988 the Second Party never worked as a Manager though he worked as an officer, there is no material on record which could take out to the Second Party out of the definition of 'workman'.

17. After giving concious thought to the submissions advanced by Shri. Malegaonkar, one thing is clear that, the Second Party was definitely promoted from the cadre of Clerk to an Officer. The transfer of the Second Party as a Manager to Akluj Branch in the year 1987 is also not disputed. It is also significant to note that the Second Party who was transferred to Akluj as a Branch Manager and who had worked for a period of 2 years was never demoted as a Clerk inspite of his transfer to Pune as an Officer. The First Party has filed on record the loan application of Ganga Sagar Stalb & General Store (Ex. C-20 for getting the loan of Rs. 25,000. On perusal of Ex. C-20, it is seen that, the Second Party has sanctioned the loan alongwith his recommendation. Besides that, there is stock inspection report of said customer under the signature of the Second Party in respect of the loan amount distributed by the Bank to the above referred person. These two documents prima facie goes to show that the Second

Party had power to take decision which has a binding effect on the Bank. Secondly, it is also significant to note that while cross-examining Shri. Panditao, witness of First Party, though it has been suggested to him that, after Dec. 1988 the Second Party was not working as a Manager and Shri Gajbiye, Makandar, Paugi, Gaikwad and Kendre were not working under the control of Second Party after 1988, it is nowhere disputed that, till the Second Party was working as a Branch Manager, at Akluj, above referred person were working under the control of Second Party. On perusal of the cross-examination of the Second Party, it is seen that, he has recommended his own increment in the capacity of Manager. Besides that, the Second Party has unequivocally admitted that, as a Branch Manager he was authorised to sanction the loan within the limit of Branch Manager. Now, it is significant to note that, the Second Party who was promoted from clerical cadre was never demoted on original post. On these background, the rendering of services by him as a Branch Manager for one year coupled with the fact that, he had power to sanction the loan within his limits, had a power to carry out stock inspection of immovable property, in respect of loan, disbursement to the customers and some employees were working under his control, if considered collectively, with the fact that the Second Party was never demoted as a Clerk then, the only inference that can be drawn that, the Second Party while working as a Branch Manager had acted in supervisory and managerially capacity. I further conclude that, he had a power to sanction the loan and some employees were working under his control. I am of the clear opinion that, merely because at the time of chargesheet the Second Party was not working as a Manager, and was working as an officer; that does not exclude him from the category of Supervisor. The application of Bank of India Service Regulation an Officer's Conduct Regulation, requirement of submission of property return every year to the Bank are some of the test in banking sector to exclude the Second Party from the cadre of Clerk. Therefore, also, I have no hesitation to conclude that, the nature of work performed by the Second Party was of supervisory and managerial nature and therefore, he is out of the definition of 'workman'. Therefore, to my mind, considering the facts and circumstances of present case, the ruling of Bombay High Court in the case of SUNITA VATSRAJ is not helpful to the Second Party. I therefore, record my finding on Issue No. 1 in negative.

18. In view of negative finding on Issue No. 1, as the Second Party is out of the definition of 'workman', the issue regarding the dismissal of Second Party is frustrated and redundant to discuss. I therefore, decide Issue No. 3 accordingly. As the Second Party has failed to prove his status as a 'workman' I have no alternative than to decide the reference in negative because of the failure on the part of Second Party to prove his status as 'workman'. Hence, award.

AWARD

- (1) Second Party is not workman within Section 2 (s) of I.D. Act.
- (2) Inview of above finding reference is answered in negative.
- (3) Parties to bear their cost.

PUNE:

Date : 3rd Oct. 2005.

S.S. VYAVAHARE, Industrial Tribunal, Pune.

(R.K. PANDEY)

For Secretary,

Industrial Tribunal Pune

नईदिल्ली, 26 मार्च, 2007

का.आ. 1103.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गोरखपुर क्षेत्रीय ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्हिट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 61/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-3-2007 को प्राप्त हुआ था।

[सं. एल-12011/71/2002-आई.आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 26th March, 2007

S.O. 1103.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/2003) of the Central Government Industrial Tribunal, Lucknow now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Gorakhpur Kshetriya Gramin Bank and their workmen, which was received by the Central Government on 23-3-2007.

[No. L-12011/71/2002-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM LABOUR COURT LUCKNOW
PRESENT**

SHRIKANT SHUKLA, Presiding Officer

I. D. NO. 61/2003

Ref. No. L-12011/71/2002-IR(B-I) Dt. 13-5-03

BETWEEN

The Coordinator

United Forum of Gorakhpur Kshetriya

Gramin Bank, Unions, C/o Gorakhpur

Gramin Bank, Head Office, Mohaddipur

Gorakhpur—273002

AND

The Chairman
Gorakhpur Kshetriya
Gramin Bank, Head Office, Mohaddipur
Gorakhpur—273001

AWARD

1. The Government of India, Ministry of Labour, New Delhi referred the following dispute No. L-12011/71/02-IR(B-I) dated 13-5-03 for adjudication to the presiding Officer, CGIT-cum-Labour Court, Lucknow;

“Whether the demand of united forum of Gorakhpur Kshetriya Gramin Bank, Unions (i) for the payment of one advance increment in the respective pay scale on account of computerization and (ii) for the payment of transport allowance to the employees of Gorakhpur Kshetriya Gramin Bank w.e.f. 1-4-2000 on par with the employees of the state bank of India (the sponsor bank) is legal and justified ? If Yes, to what relief the workman concerned entitled for?”

The trade union filed the statement of claim for transport allowance and fixed personal pay allowance for the employees of Gramin Bank. Claim was received by post on 20-8-03. Thereafter the opposite party filed the written statement. Rejoinder was filed on 22-9-04. Case proceeded for evidence. Several dates were fixed but when the parties fail to produce evidence on 21-7-05 then it was observed that parties do not want to produce oral evidence therefore 3-10-2005 was fixed for argument.

The trade union moved an application dt. 20-4-06 for setting aside the order dt. 21-7-05 and therefore 19-9-06 was fixed for evidence. The trade union did not appear thereafter for producing any evidence therefore 22-9-06 was fixed for ex-party have against the worker and 9-10-06 was fixed for ex-party hearing.

On 9-10-06 the management of the bank filed application C-30 the trade union president dt. 22-9-06 for rejecting the claim and accordingly award be passed. In the interest of justice the trade union was informed about the fact that case is proceeded ex-party against him. Accordingly registered notice was issued to the trade union which returned undelivered.

On 1-12-06 on Sri Ajay Kumar Vidarthi, pretending himself to the Parokar of the bank moved an application that an opportunity be provided so that the trade union could appear alongwith his Advocate. However, in the interest of justice 22-12-06 was fixed for ex-party evidence of the oposite party and the trade union was permitted to move an application for setting aside ex-party order passed on 22-9-2006. On 22-12-06 again Sri Ajay Kumar Vidarthi appear and moved an application C-37 for staying the proceeding as the case is pending before the Hon'ble Supreme Court. 16-1-07 was fixed for disposal of the said application but none appeared for the trade union. Trade union was directed to file copy of writ petition which is

said to be pending in the Hon'ble Supreme court but none appeared on the next date fixed i. e. 6-3-2007.

The learned representative of the opposite party stated that similar case was referred for adjudication to CGIT-cum-Labour Court, Kanpur vide reference order No. L-12012/21/02-IR (B-I) Dt. 27-1-03 and L-12012/95/02-IR (B-I) dt. 12-8-02 and both of them decided against the trade union holding that union is to entitled for any relief as claimed by them. The representative of the opposite party has filed photo copy of the award. Learned representative has argued that parties to the ID's are same and the issues were the same and the award has been passed by the competent court and therefore the principle of res-judicata is applicable in the present case. Heard the representative at length. Representative of the opposite party are stated that he has not denied that factom not issue is pending in the Hon'ble Supreme Court for their adjudication. In the circumstances since the parties have not lead their evidence in this court therefore the issue can not be answered at present. Award passed accordingly.

Lucknow
12-3-2007

SHRIKANT SHUKLA, Presiding Officer
नई दिल्ली, 26 मार्च, 2007

का.आ. 1104.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार परिचम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, व श्रम न्यायालय, अजमेर के पंचाट (संदर्भ संख्या 2/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-3-2007 को प्राप्त हुआ था।

[सं. एल-41012/147/2002-आई.आर.(बी-1)]

अजय कुमार, डेस्क अधिकारी
New Delhi, the 26th March, 2007

S.O. 1104.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/03) of the Industrial Tribunal/Labour Court, Ajmer now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Western Railway and their workmen, which was received by the Central Government on 23-3-2007.

[No. L-41012/147/2002-IR (B-I)]

AJAY KUMAR, Desk Officer

अनुबन्ध

श्रम न्यायालय एवं औद्योगिक न्यायाधिकरण, अजमेर
सी आई टी आर. नं. 2/03
रेफरेंस संख्या एल-41012/147/02/आई आर (बी-1)

दि. 23-1-03

दी, सेंट्रल एसिस्टेंट सेक्रेटरी, ऑल इण्डिया शिड्यूल काल्ट एण्ड शिद्यूल ट्राईवर, रेलवे एम्प्लाईज यूनियन, रेलवे क्वार्टर नं. 2108,
(बी), पावर हाउस के सामने, हजारी बाग, अजमेर (राज.)

.....(प्रार्थी/यूनियन)

बधायाम

दी हिन्दी भेल स्टोर कंट्रोलर, वेस्टर्न रेलवे, जनरल स्टोर आगार, नगरा
अजमेर, जिला अजमेर (राज.)

--आप्रार्थी

.....
समझः : श्री गंगासिंह शेखावत आर.एच.जे.एस.

प्रार्थी की ओर से : श्री चंदनसिंह, एडवोकेट
अप्रार्थी की ओर से : श्री ली.डी. भार्गव, अधिवक्ता
विषयकी

दिनांक 9-2-07

अवार्ड :

केन्द्र सरकार श्रम मंत्रालय, भारत सरकार, नई दिल्ली से प्राप्त
रेफरेंस इस प्रकार है :-

“क्या उप भंडार नियंत्रक, परिचम रेलवे सामान्य भण्डार,
आगार, अजमेर द्वारा श्रीचरण सिंह पुनर श्री मुख्याजी, क्रेन ड्राईवर
ग्रेड द्वितीय को मेटलकटर के पद पर ट्रेड टेस्ट लाइस फर्ने के बावजूद
दिनांक 26-9-79 से पदोन्नत नहीं करना उचित एवं वैध है तथा
कर्मकार को अब तक ग्रेड प्रथम के लाभ से वर्षित करना उचित एवं
वैध है ? यदि नहीं तो वह अपने नियोजक के लिए राहत पाने का
अधिकारी है।

रेफरेंस प्राप्त होने पर उम्म्य पक्ष को नोटिस जारी किये गये।
नोटिस के उपरांत प्रार्थी पक्ष उपस्थित आये और उन्होंने अपनी ओर
से अपना स्टेटमेंट आफ क्लैम दि. 2-6-03 को प्रस्तुत कर कथन
किया कि प्रार्थी की नियुक्ति खलासी के पद पर 17-2-66 को
प्रतिपक्षी के अधीन हुई थी तत्पश्चात् डिप्टी सी ओ.एस के पत्र दि.
9-7-79 के द्वारा प्रार्थी को मेटलकटर का टेस्ट लेकर सफल घोषित
किया। किन्तु मेटलकटर का पद नहीं देकर सिलिंगर के पद पर लगा
दिया। प्रार्थी की पदोन्नति वर्ष 1987 में सिलिंगर के पद पर से क्रेन
ड्राईवर द्वितीय के पद पर की गई। प्रार्थी ने पिछले 14 वर्षों से क्रेन
ड्राईवर का कार्य किया है। किन्तु क्रेन ड्राईवर ग्रेड प्रथम का लाभ
नहीं दिया जा रहा है जबकि प्रार्थी के साथ में नौरतमल क्रेन ड्राईवर
को ग्रेड प्रथम का लाभ दिया जा रहा है। इस प्रकार समान कार्य और
समान वेतन के सिद्धांत की अवहेलना की जा रही है। अंत में सम
1987 से क्रेन ड्राईवर की ग्रेड की प्रथम वेतन श्रूखला गत वेतन भर्तों
सहित दिलाने की प्रार्थना की है।

प्रतिपक्षी ने उत्तर में अंकित किया है कि प्रार्थी ने मेटलकटर
की व्यावसायिक परीक्षा दि. 24-1-80 को पास की थी। न कि
9-7-79 को। प्रार्थी की प्रथम नियुक्ति खलासी के पद पर हुई थी।

उसके बाद स्टेटिलीटी के आधार पर स्वेशल खलासी के पद पर
दि. 11-8-82 से पदोन्नति हुई। सिलिंगर का व्यावसायिक परीक्षा
उत्तीर्ण करने के फलस्वरूप 19-9-84 से पदोन्नत किया गया। सन
1987 में सिलिंगर के पद से क्रेन ड्राईवर द्वितीय ग्रेड में प्रार्थी को
पदोन्नति ही गई जब से वह इसी वेतनमान में कार्य कर रहा है।
नौरतमल मोटर ड्राईविंग है और क्रेन ड्राईवर का प्रशिक्षण प्राप्त कर
रखा है। जब कभी प्रार्थी अवकाश पर रहता है तब नौरतमल मीटर
ड्राईवर से क्रेन का कार्य लिया जाता है। प्रार्थी व नौरतमल का
पदोन्नति का चैलेन्ज अलग-अलग है। क्रेन ड्राईवर प्रथम का कोई
स्वीकृत चढ़ नहीं है। प्रार्थी ने वर्ष 1987 के लाभ के सम्बन्ध में 2003
को अवधार विलम्ब से विवाद उठाया है। विलम्ब का कोई स्पष्टीकरण
नहीं दिया है। अंत में क्लैम निरस्त करने की प्रार्थना की।

प्रार्थी अपने क्लैम की सम्पूर्णी में स्वयं का शपथ पत्र प्रस्तुत
कर और खाली सिंह खरेरा का शपथ पत्र प्रस्तुत कर प्रतिपरीक्षण
करवाया है। प्रलेखीय साक्ष्य में प्रदर्श डब्ल्यू-1 से डब्ल्यू-15 प्रलेखों
की प्रतियां प्रदर्शित करवाकर प्रस्तुत की। प्रतिपक्षी की ओर से श्री
राजेन्द्र मोहन गौड़, सहायक कार्मिक अधिकारी और नरेन्द्र कुमार का
शपथ पत्र प्रस्तुत कर प्रतिपरीक्षण करवाया है। प्रलेखीय साक्ष्य में
एम-1 से एम-8 प्रलेखों की प्रतियां करवाकर प्रस्तुत की है।

उभय पक्ष का श्रवण किया। प्रत्यक्षी का अवलोकन किया।

उभय पक्ष ने अपने-अपने क्लैम एवं उत्तर में अंकित कथनों
की बहस में फुराक्षीत की है। प्रार्थी के अधिवक्ता का तर्क है कि
प्रार्थी ने आदेश दि. 24-1-80 द्वारा मेटल कटर का आदेश
दि. 19-4-84 द्वारा सिलिंगर पद का और आदेश दि. 2-9-87 द्वारा
चेन राइडर का ट्रेड टेस्ट लाइस किया है इसका विवरण प्रदर्श एम-3
सर्विस मुस्तिका की मुर्दिय पर अंकित है। उनका तर्क है कि क्रेन
ड्राईवर ग्रेड प्रथम का पद होते हुए भी प्रार्थी को ग्रेड प्रथम का लाभ
नहीं दिया जारकि उसके साथ ही नौरतमल को दे दिया गया। इसके
विपरीत प्रतिपक्षी के विद्वान् अधिवक्ता का तर्क है कि क्रेन ड्राईवर ग्रेड
प्रथम का कोई पद नहीं है। उनका तर्क है कि प्रार्थी की पदोन्नति
घैमेल एवं नौरतमल की पदोन्नति का चेनल बिन्न-बिन्न है। उनका
तर्क है कि प्रार्थी ने पदोन्नति की घैम लाईन चुनी और उसमें दो
पदोन्नतियां प्राप्त की और आगे वह ल्लाक होने पर लाईन-चेनल में
प्रवेश नहीं कर सकता है। मैंने उभय पक्ष के तर्कों पर विचार कर
लिया है। प्रदर्श एम-3 के अनुसार प्रार्थी 1-11-71 से खलासी के पद
पर क्रनकर्म हुआ और 11-4-84 से प्रदर्श एम-5 के अनुसार झैमेल
खलासी के रूप में पदोन्नत हुआ। तदुपरांत 19-4-84 को सिलिंगर
के पद पर प्रदर्श प्रम-6 के अनुसार पदोन्नत हुआ। तदुपरांत आदेश
दिनांक 2-9-87 के द्वारा क्रेन ड्राईवर के पद पर पदोन्नत हुआ।
जिसका उल्लेख प्रदर्श एम-7 में है। इस प्रकार स्पष्ट है कि प्रार्थी ने
विभिन्न टेस्ट लाइस कर पदोन्नति की लाईन चुनकर निरंतर पदोन्नतियां
प्राप्त की हैं। और अब वह उस लाईन को छोड़कर पदोन्नति की
अन्य लाईन में प्रवेश नहीं कर सकता है। एक लाईन चुनने व
पदोन्नति प्राप्त करने के सम्बन्ध में उसने पहले कभी कोई आपत्ति
प्रस्तुत नहीं की। यह सत्य है कि प्रार्थी की सेवा निवृत्ति 30-4-03 को
हो चुकी है। प्रदर्श एम-7 आदेश दि. 15-5-04 के अध्ययन से भी

स्पष्ट है कि क्रेन ड्राइवर फस्ट का कोई पद नहीं था। प्रारम्भ ग्रेड प्रथम के 2 पद थे जो बाद में दि. 1-11-03 से संशोधन कर 14 कर दिये गये। प्रदर्श एम-8 के अनुसार भी क्रेन ड्राइवर द्वितीय का ही पद है। क्रेन ड्राइवर प्रथम का कोई पद नहीं है। जहाँ तक नौरतमल का सम्बन्ध है प्रदर्श एम-14 और 15 उप सुख्य यांत्रिक इंजीनियर (कैरिज) से सम्बन्धित है -- कि प्रार्थी अन्य विभाग में सेवारत है। प्रस्तुत प्रकरण में प्रदर्श डब्ल्यू-9 उप भण्डार नियंत्रक का महत्वपूर्ण पत्र है जिसके अनुसार प्रार्थी की पदोन्नति हेतु क्रेन ड्राइवर के पद पर कोई चेनल नहीं है और ना ही कोई स्वीकृत पद है। इस तथ्य के आधार पर मैं इस निष्कर्ष पर पहुंचता हूँ कि प्रार्थी की क्रेन ड्राइवर प्रथम की पदोन्नति का कोई चेनल नहीं है और ना ही ग्रेड प्रथम का पद स्वीकृत है। मेटलकटर और ट्रेन ड्राइवर अलग-अलग चेनल और अलग-अलग पद हैं। विवाद के प्रथम भाग के संम्बन्ध में कोई स्पष्ट रूप से विवाद प्रेषित नहीं किया गया है। जब प्रार्थी ने टेस्ट 24-9-79 को पास किया है तब दो दिन पश्चात् ही 26-9-79 से मेटलकटर के पद पर पदोन्नति दिया जाना कैसे संभव है। औपचारिकता में कुछ समय लगना स्वाभाविक है। इस प्रकार प्रार्थी का क्लेम निरस्त होने योग्य है।

आदेश

फलत: इस विवाद का उत्तर इस प्रकार से दिया जाता है कि उप भण्डार नियंत्रक परिचय रेलवे सामान्य भण्डार आगार, अजमेर द्वारा श्री चरण सिंह पुत्र श्री मुखाजी क्रेन ड्राइवर ग्रेड द्वितीय को मेटलकटर के पद पर ट्रेड टेस्ट पास करने के बावजूद दिनांक 26-9-79 से पदोन्नत नहीं करना उचित एवं वैध है तथा कर्मकार को अब तक ग्रेड प्रथम के लाभ से वर्चित करना उचित एवं वैध है। प्रार्थी कोई अनुबोध प्राप्त करने का अधिकारी नहीं है।

अवार्ड की प्रति नियमानुसार प्रकाशनार्थ केन्द्र सरकार को प्रेषित कर दी जावे।

अवार्ड आज दि. 9-2-07 को खुले न्यायालय में लिखावाया आकर सुनाया गया।

जी. एस. शेखावत, न्यायाधीश

नई दिल्ली, 26 मार्च, 2007

का.आ. 1105.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की भारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तरी रेलवे के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्हित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 866/2 के 5) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-3-2007 को प्राप्त हुआ था।

[सं. एल-41012/157/96-आई.आर.(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 26th March, 2007

॥ S.O. 1105.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (866/2K5) of the Central Government Industrial Tribunal /Labour Court-II, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workmen, which was received by the Central Government on 23-3-2007.

[No. L-41012/157/96-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Presiding Officer : Shri Kuldip Singh

Case No. I.D. No. 866/2k5.

Registered on 9-09-2005

Date of Decision 12-03-2007.

Jagdamba Parsad S/o Shri Guru Prasad R/o House No. 10
Shiv Puri Colony, Yamuna Nagar

....Petitioner

Versus

The Chief Works Manager, Northern Railway-Jagadhari Workshop

....Respondent

Appearance .

For the Workman : Shri D.R. Sharma &
R. P. Rana Advocate

For the Management : Mr. N.K. Zakhmi, Advocate

AWARD

The Government of India vide their order no. L-41012/157/96-IR (B. I) dated 2nd Sep., 1997 referred the following matter for the adjudication of this Tribunal :—

"Whether the action of the Chief Works Manager, Northern Railway Jagadari Workshop in terminating the services of Shri Jagdamba Prashad S/o Shri Guru Parshad, Ex-Bungalow peon w.e.f. 31st October, 1991 is just and legal? If not to what relief the workman is entitled to and from which date?"

On getting the notice from this Tribunal the parties appeared through their Counsel. The workman filed his statement of claim and the Management their Written Statement. The workman supported his claim with his affidavit. He also placed on record the photo copies of the documents marked by him as Annexure P-1 to P-17 besides A/1. The Management produced the documents Exhibited as M-1 to M-10. The Management tendered the affidavits of Messrs. S.C. Trikha and Ram Pher, but did not produce them for cross examination of the workman and thereby they left those witnesses. Both the workman and Shri A.K. Arora, witness of the Management appeared to prove their

affidavits and were subject to cross examination by the opposite side. The limited question for the consideration of this Tribunal is whether the Chief Works Manager, Northern Railway, Jagadari had terminated the services of the Jagdamba Prashad, the workman, on 31st October, 1998 and if so, whether the action of the said authority was just and legal. If not, to what relief the workman is entitled to.

In his statement of claim, the workman has maintained that he was appointed as Sub-Bungalow Khalasi on 15th March, 1988, by the Chief Project Manager, Northern Railway, Delhi, for three months in the pay scale of 750-940 and was posted against the newly created post. Later on, vide order dated 17th October, 1988, the post of Chief Project Manager, Delhi was transferred to Jagadari Workshop and the workman was also directed to report for duty in the mechanical Branch in the Jagadari Workshop and in compliance thereto he joined his duties on 19th October, 1988, at Jagadari, against the vacancy of Shri Som Prakash, available in the mechanical branch. He was allotted token no. 2414; that on 10th Sep., 1990 it was directed to him by the Management, to appear for medical check up, before the Medical Supdt. Jagadari Workshop. He was granted leave from 11th Sep., 1990, till he joined his duties. He was medically examined and was found fit as per certificate dated 11th Sep., 1990; that the Management vide their dated 5th July, 1991, terminated the services of the workman through their Assistant Personal Officer and their action was illegal and arbitrary. On his protest he was reinstated on 1st August, 1991. Vide another letter dated 31st July, 1991 he was directed by the Assistant Personal officer to produce his school leaving certificate and the record pertaining to his working days so as to consider his case for Casual Labour Khalasi. He was, thereafter posted in mechanical workshop for three months, but thereafter his services were terminated w.e.f. 31st October, 1991.

The allegation of the workman is that the Management terminated his services illegally, in violation of provisions of Industrial Disputes Act, hereinafter to be referred as "ACT". They retained his juniors like Jaswant Singh and Tej Singh who were engaged on 2nd May and 6th Dec., 1990 respectively. The Management also screened and found suitable for appointment as Bungalow peons his juniors whereas they illegally terminated his services. The workman had served the Management from 15th March, 1988 till 9th July, 1991, without break and thus completed a continuous service of 240 days, during the years 1988, 1989, 1990 & 1991. In terminating his services the Management has violated the provisions of the Act, therefore, the Management be directed to reinstated him in service and also pay him the arrears of back wages besides interest thereon at the rate of 18%. He has also prayed for any other relief found due to him.

The Management has opposed the claim of the workman by raising preliminary objections to the maintainability of the reference. It is stated by them that

since the engagement of the workman was for a specified period and as substitute bungalow peon, the dispute does not fall within the ambit of Section 2-A of the Industrial Disputes Act. Moreover, since the workman was not engaged in accordance with the procedure laid down, therefore, he did not get the right to hold the post. The workman has also not stated true facts. After being relieved on 17th October, 1988, by efflux of time, he was engaged afresh on 19th October, 1988, purely on temporary basis and he was disengaged on 9th July, 1991, after serving upon him a notice of 14 days as per railway rules. Again on his request and on the availability of the post of Casual Labourer Khalasi, he was engaged for three months on contract which ended on 31st October, 1991. The Management has also taken the plea that the reference is stale and belated, as the services of the workman were discontinued on 31st October, 1991 and he had not raised the claim in the year 1995.

On merit it is submitted by the Management that the workman was engaged as Bungalow Khalasi, purely on temporary basis, for the period of three months w.e.f. 15th March, 1988 and when the post was no longer available, the workman approached the authorities at Jagadari, with his application dated 19th October, 1990, upon which he was engaged w.e.f. 19th October, 1991 and was disengaged w.e.f. 9th July, 1991. On the transfer of CPM the post for the workman was not available, therefore, his services were terminated on 9th July, 1991, after giving him 15 days notice under railway rules. Denying the claim of the workman that he had made representation, it is stated by the Management that the workman did not reply the notice given to him by the Management. However, the Management engaged the workman, for loading and unloading for the period of three months purely on contractual basis and he was disengaged after the expiry of the contractual period w.e.f. 31st October, 1991. The Management has further denied that any junior of the workman was retained in service. Claiming that the substitute bungalow peon and khalasi did not fall in the same category it is stated by them that the Management had not retained persons with the name of Jaswant Singh and Tej Singh. They admitted that the Management had screened substitute Khalasi to engage them as Bungalow peons but stated that the allegation of violation of provisions of Section 25-H are wrong and that the claim of the Management is just, legal and proper.

The workman appeared as a witness and proved his affidavit Exhibit W-1. When Cross examined by the Counsel for the Management he admitted that he was appointed by Exhibit M-1 but denied that his services were terminated vide M-2 w.e.f. 31st October, 1988. He admitted to have made the representation for his fresh engagement as Khalasi/Bungalow peon as per M-3. He further admitted the contents of documents M-4 and M-5 and also admitted to have received 14 days notice before the termination of his services. He also admitted to have been engaged for

three months vide M-6 and his services terminated by M-7. He admitted not to have challenged the termination notice and then termination except by the demand notice submitted to the ALC(C). He claimed that he was appointed as Khalasi/Bunglow peon at Delhi and remained attached with the officers on whose transfer back, the post of Bungalow peon was abolished and he was sent back as Khalasi. He denied that he was engaged on contract basis for three months. He admitted that he has been working with a contractor earning Rs.50 per day. He denied that he was engaged regularly.

In substance the claim of the workman is that he had served the Management from 15th March, 1988 till 7th July, 1991, in different capacities but continuously and that the Management terminated his services illegally and arbitrarily, without following the provisions of the Act and rules. They reinstated him in service on 1st August, 1991 but again terminated his services w.e.f. 31st October, 1991. They retained his juniors such as Jaswant Singh and Tej Singh who were engaged on 2nd May and 6th Dec., 1990 respectively. They further violated the provisions of the Act by selecting his juniors as Bungalow peons whereas the workman was neither called for screening nor he was considered for the post. The Management also did not lend their air to the claim of the workman although he had served the Management without break and in no case for 240 days during the period 1988 to 1991. He has prayed for his reinstatement in service with continuity and back wages alongwith interest @ 18% p.a and for any other relief found due to him.

The Management has contested the claim of the workman and their main plank, to the claim of the workman, is that the workman was engaged purely on temporary basis and for a specific period of three months with the stipulation that his services would be terminated after three months or before when the same were not required. There were further conditions attached to his engagement that the workman will not have any claim over the post he is appointed or for an alternate to Class IV post. According to them the services of the workman were not renewed after 17th October, 1988. He was appointed afresh as Bungalow Peon on his request at Jagadari on 19th October, 1988 and he worked till 9th July, 1991 on which day his services were terminated after serving upon him 14 days notice under Railway Rules. On a fresh request of the workman, he was engaged for three months more for loading and unloading of coal wagons against the sanctioned post of Casual Labourer Khalasi. His services were terminated on 31st October, 1991 as there was no further sanction of the post against which he was engaged. The claim of the workman does not fall within the ambit of Section 2-A of the Act. He is not entitled to any relief. Their further claim is that the engagement of the workman was not in accordance with rules and procedure. Moreover his engagement was Casual, Temporary and for specific

period. Therefore, also his disengagement did not fall within the provisions of Section-2 (oo) (bb) of the Act. It is also their case that the claim of the workman is bad for latches as his services were terminated on 31st October, 1991 and he has raised the demand in the year 1995.

The workman has raised the demand against the Chief Works Manager, Northern Railway, Jagadari Workshop for having terminated his services in violation of the provisions of the Act and principles of natural justice. His claim, that he had joined service with the Management on 15th March, 1988; and that his services were terminated finally on 31st October, 1991, has not been denied by the Management. In their reply they have admitted that the workman was engaged by the Management for three months and he had worked upto 17th October, 1988. They have further admitted that the workman was re-engaged on 19th October, 1988 and he had served the Chief Project Manager, Northern Railway, Jagadari upto 9th July, 1991. It is also admitted by them that the workman was also engaged for three months against the post of Casual labourer Khalasi for loading and unloading of wagons and was finally disengaged on 31st October, 1991. Thus there is no denial that the workman had served the Management from 15th March, 1988 till 31st October, 1991, with breaks in between which in the first case was only of 18th October, 1988 and a slightly longer break for few days in July, 1991. Thus the workman has been able to show that he had put in 240 days continuous service by 31st October, 1991, when his services were finally terminated. If we accept the claim of the Management that the engagement of the workman during August to October, 1991 was for a specific period of three months then also there is sufficient evidence to show that on 9th July, 1991, when, as per the Management, the services of the workman were disengaged since the new Chief Project Manager did not accept him the workman had earned the status of having served the Management for 240 days preceding the date of termination of his service in a Calendar year. According to them also the workman had continuously worked from 19th October, 1988 till 9th July, 1991, admittedly for more than 240 days 12 months preceding the date of termination of his services.

The Management claims and the workman has admitted to have received 14 days notice from the Management, before the termination of his services. The Management submitted that as per the Railway Rules a notice of 14 days was required to be issued to the workman without showing the rule by which there was such a requirement to be fulfilled. This stand of the Management is contradictory to their claim that the workman was engaged for specified period and on the expiry of that period he got disengaged automatically. They have also claimed that the engagement of the workman was not in accordance with the rules and if that was so then where was the requirement of giving him the notice of 14 days under the Railway Rules. There is nothing on record to show that his

engagement was made in accordance with rules and so he was governed by those rules. In the facts and circumstances of the case the workman was governed by provisions of the Act so was the Management governed and their plea of having followed the Railway Rules is of no consequence.

On record there are documents marked as P-1 to P-17 which give out a different story. According to P-1 the post of Chief Project Manager was transferred from New Delhi to Jagadari, therefore, the services of the workman were disengaged on 17th October, 1988. As per this document the workman reported for duty on 19th Oct., 1988 at Jagadari. This shows that there was no break in the service of the workman even on 18th October, 1988 since ordinarily a day was required for travelling from Delhi to Jagadari and the workman joined his duty from 19th October, 1988. Thus he continuously worked for the Management from 15th March, 1988 till 31st October, 1991 although in different offices. The Management has taken the plea that the workman did not work on the same post, but they have failed to show that the posts on which the workman worked, at different times, were of different status, higher or lower, and were carrying different pay scales. The Management has taken the plea that the appointment of the workman at Jagadari was on his fresh request. The workman has not denied having made the request but there was the option with him as his prime concern at the time could be to get the source of livelihood and officer with whom he was attached was transferred to Jagadari, so without losing any time he reported for duty to him and served him till 5th July, 1991. There is absolutely no evidence to show that during the period 19th March, 1988 to 5th July, 1991 there was a break in the working of the workman and so he did not serve the Management for 240 days 12 months preceding that date. By Annexure P-4 the workman was adjusted on a post in the workshop against the vacancy of Shri Som Prakash. Later on the workman was engaged against the post of Khalasi for loading and unloading of food wagons. The Management therefore, was equally considerate to adjust the workman, here and there, and it is their wrong claim that they had disengaged the workman on the completion of period of engagement as is claimed by them now. According to P-3, the post of Dak Bungalow Khalasi was converted into Bungalow Peon for the utilization of the Chief Manager Project, Jagadari, against which post the workman worked from 19th Oct., 1988 till 5th July, 1991. Vide P-4 the workman was posted in M/W Shop against the existing vacancy of Shri Som Parkash and he was allotted T. No. 2124.

The Management has neither claimed nor proved that on 31st October, 1991 or even earlier on 5th July, 1991, when the services of the workman were terminated, they had followed the provisions of Section 25-F of the Act. The Management before terminating the services of the workman neither gave him the notice of termination of his

services nor paid him the wages for the notice period. They also did not pay him the retrenchment compensation although he had served the Management for more than 240 days 12 months preceding the date of termination of his services on 5th July, 1991 as well as 31st October, 1991. The retrenchment of workman made on those dates was bad in law and the same is quashed. He is treated to be in service all through this period as if there was no order of his termination from service.

The other claim of the workman is that the Management also violated the provisions of Section 25-H of the Act as they retained Jaswant Singh and Tej Singh who were engaged on 2nd May and 6th Dec., 1990, i.e. later than the engagement of the workman. They were retained in service and were also regularized as per Annexure P-10. Shri A.K. Arora who appeared as a witness for the Management stated nothing against the claim made by the workman that the Management had retained the juniors of the workman in service and retrenched the services of the workman. On that count also the disengagement of the workman was bad in law. There is no merit in the submission of the Management that since there is no reference of Section 25-H of the Act, so this aspect cannot be looked into as the violation of Section 25-H of the Act is incidental to the reference made.

After going through the file I am of the opinion that the action of the Management in terminating the services of the workman on 31st October, 1991 was bad in law and the same is quashed. The workman is treated to be in service as if there was no order of his termination of services. As regards the question of relief, the workman in his statement, admitted that he has been working with a contractor, getting Rs. 50 per day. Thus the workman has remained engaged but he cannot be said to be fully engaged gainfully. The workman is, therefore, entitled to back wages, but only to the extent of 50% p.a. The award is passed in his favour. Let a copy of this award be sent to the appropriate Govt. for necessary action and the file be consigned to records after due completion.

— KULDIP SINGH, Presiding Officer

नई दिल्ली, 26 मार्च, 2007

का.आ. 1106.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण-II, चापड़ीगढ़ के पंचाट (संदर्भ संख्या 765/2k5) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/26/2003-आई आर(बी-I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th March, 2007

S.O. 1106.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 765/2k5) of the Central Government Industrial Tribunal /Labour Court-II, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 23-3-2007.

[No. L-12012/26/2003-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II CHANDIGARH

Presiding Officer : Shri Kuldip Singh

Case No. I.D. No. 765/2k5.

Registered on 5-09-2005

Date of Decision 20-02-2007.

Yadu Nath C/o Shri V. K. Chaudhary,
R/o House No. 2001, Sector-44-C, Chandigarh

....Petitioner

Versus

State Bank of India through Deputy Manager,
Zonal Office, Punjab, Sector-17, Chandigarh

....Respondent

Appearance

For the Workman : Mr. Raj Kaushik, Advocate.

For the Management : Pran Nath Arora &
Sanjeev K. Arora Advocates.

AWARD

The parties are not present. Even on the last two dates they were not present. On 15th October, 2006 the indulgence was shown on the request of Shri V.K. Sharma, Law Officer of the Management, Haryana. A notice under Registered Cover *vide* receipt No. 3626 dated 12th January, 2007, was sent to the workman, to appear and prosecute his case. The notice sent has not been received back unserved. This raises the presumption that the notice has been served upon the workman, but he is not present. It also shows that the workman has lost interest in the case, that is why, he is not present. Even on earlier occasions, he did not appear in person. It is in these circumstances that the case is being disposed off in the absence of the parties.

The Government of India *vide* their Order No. L-12012/26/2003 IR(B-I) dated 13th May, 2003 referred this dispute for the adjudication of this Tribunal :—

“Whether the action of the Management of State Bank of India in terminating the service of Shri Yadu

Nath, Ex-Mail was justified? If not, what relief the concerned workman is entitled and from which date?”

The notice of the reference was given to the parties. They appeared through their Counsel. The case was then transferred to this Tribunal and fresh notices were issued to the parties. The workman appeared through Raj Kaushik, Advocate who sought time to file the power of attorney, but he failed to file any. However, the workman filed his claim petition and the Management their Written Statement opposing the claim of the workman. They also filed the affidavit of Ramesh Chand Sood, Chief Manager whereas the workman neither filed his rejoinder nor his affidavit. He has also not appeared as a witness nor has produced any other evidence in support of his claim.

The workman has claimed that he was appointed as a Mali by the Management in Jan., 1993 and he was to perform duties at the residence of Deputy General Manager of Punjab; that he performed his duties and in addition to that he looked after the Zonal Office. He was allowed to work upto 14th Dec., 2001. He proceeded on leave to visit his home town, but thereafter he was not allowed to work; that he was paid wages upto the end of 1996. Thereafter the wages were paid to him by different modes like through electricity contractor; that the workman served the Management for more than 240 days, but the Management did not follow the provisions of Section 25-F of the Industrial Dispute Act, hereinafter to be referred as Act”. It is claimed, that the termination of his services was bad in law and the same is required to be set aside. He has prayed for relief of reinstatement in services with full back wages and other consequential benefits.

The Management has opposed the claim of the workman. It is stated by them that the workman was never employed by the Management. In fact the Management had a contract with the company named “Yadu Nath Gardner and Co.” which provided part time labourer for two hours twice a week and the workman used to do the work for the Management. The contractor got the work done through different persons for which the company had made the payment. No order of appointment of the workman was given by the Management nor his services were terminated by them. There, in fact existed no relationship of master and servant between the parties. The Management also did not exercise control over the workman; that the engagement in the Banks are done under the statutory rules and procedure. It is further their claim that the Company had made the payment through vouchers, the copies of which are placed on record. According to them the company had served them during the year 1996 and thereafter the workman never worked for the Management. They denied that workman was paid wages through electricity or maintenance contractors; and stated that the contractual relationship with Messers. Yadu Nath Gardner and Co., ended in the year 1996. According to them the workman did not continuously work for the

Management for 240 days nor he worked continuously from Jan., 1993 to Dec., 2001. The workman was neither engaged by the Management nor his services were terminated by them. The Management had paid wages for maintaining the Zonal Office and the residence of Deputy General Manager, by vouchers bills. According to them the mere non renewal of the contract could not be termed as retrenchment; and that the disengagement of the workman was valid.

The Management has supported their claim by the affidavit of Shri Ramesh Chand Sood, Chief Manager. However, the same has not been proved in accordance with law.

The perusal of the file shows that except the statement of claim, the workman has not supported his case by any evidence much less his own affidavit and statement. He has, therefore, completely failed to prove that he was engaged by the Management as a Mali and he had served from 1993 to 2001 continuously and in no case for less than 240 days in 12 months proceeding the date of termination of his services. He has utterly failed to prove the relationship of employer and employee between the parties. On the other hand, the Management has claimed that the workman had worked with them under a contract which was terminated by afflux of time in the year 1996 and thereafter the workman did not work for them. Against this claim, there is no rebuttal and in this the loser is the workman.

After going through the pleadings of the parties and the evidence, I am of the opinion that the workman has failed to show that he was engaged by the Management as Mali; and that the Management had terminated his services and that the action of the Management was not justified. In the circumstances the workman is not entitled to any relief. The reference is answered against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 26 मार्च, 2007.

क्र.आ. 1107.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 169/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/167/95-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 26th March, 2007

S.O. 1107.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No.169/95) of the Central Government Industrial Tribunal /Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 23-3-2007.

[No. L-12012/167/95-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/169/95

SHRI C. M. SINGH : Presiding Officer

PRESENT:

Shri Arjun Lal Gahwai,
C/o Smt. Jaylaxmi Gahwai,
P.H.E. Deptt., Sub-Division-I,
Ware House Road,
Bilaspur.

Workman/Union

Versus

The D.G.M.,
State Bank of India,
Zonal Office,
Shanker Nagar,
Raipur.

Management

AWARD

Passed on this 13th day of February, 2007

1. The Government of India, Ministry of Labour vide its Notification No.L-12012/167/95-IR(B-I) dated 22-9-95 has referred the following dispute for adjudication by this tribunal:

"Whether the action of the management of SBI in striking off the name of Shri Arjun Lal Gahwai, ex-cashier-cum-clerk from the Bank rolls w.e.f. 20-1-1977, is legal and justified? If not, to what relief the workman is entitled?"

2. The case of workman Shri Arjun Lal Gahwai in brief is as follows. That he was appointed as cashier-cum-clerk by the management on 6th day of January, 1971. He was confirmed on the said post on 8th day of July, 1971. Workman Shri Arjun Lal Gahwai was transferred from Bilaspur to Jagdalpur by the management in the month of August, 1975. He joined his duty at Jagdalpur branch as per order of his transfer by the management. He worked at Jagdalpur branch till 2nd day of June, 1976 continuously. Thereafter he proceeded on leave w.e.f. 28th day of June, 1976 on the ground of his illness as well as illness of his mother. Due to illness, he could not join his duty at Jagdalpur branch from 28th June 1976. He requested the management from time to time to grant him leave. The

management issued a letter on 12th day of Jan., 1977 directing him to join duty at Jagdalpur branch by 20th January, 1977. He approached the Jagdalpur branch on 1st February 1977 for resuming his duty, but the management did not permit him to join the duty. He was never issued any termination order from the management. The management illegally and arbitrarily struck off his name from the rolls w.e.f. 20th January, 1977. It has been averred by the workman that he had continuously worked for more than 240 days. The management neither served him with one months statutory notice nor paid any retrenchment compensation prior to the termination of his services. Thus the action of the management in striking off his names from the rolls of the Bank on 20-1-77 is illegal ab-initio and he deserves to be reinstated, with all back wages.

3. The management contested the reference and filed their Written Statement. Their case in brief is that workman was a habitual absentee from duty without application for leave and prior intimation. He remained unauthorisely absent at Jagdalpur branch. The Branch Manager, Jagdalpur branch informed him by a telegram to report for duty on 19th day of October, 1976 followed by reminder dated 30-11-76 and 10-12- 76 by registered post. Despite the directions of the Branch Manager, workman Shri Arjun Lal Gahwai did not care to report for duty till 9th day of January, 1977. Thereafter the management directed him to report for duty at Jagdalpur branch by 20th day of January, 1977 intimating that failing which his name would be struck off from the Bank rolls. This letter of the management was received by the workman and even then he did not care to join duty at Jagdalpur branch. It has been further pleaded by the management that the workman was a habitual absentee without justifiable reason. He remained absent from 24th day of August, 1975 to 30th day of September, 1975 from 1st October, 1975 to 30th November, 1975 from 22-12-75 to 1-2-76 without any reason. Again he remained absent from duty w.e.f. 28th day of June 1976 to 12th day of July 1976 and from 13-7-76 to 20-1-77 and in this manner the workman remained absent from duty without any just cause and without obtaining any permission from the management. That the management rightly struck off his name from the Bank rolls w.e.f. 20-1-77. It has already been pleaded that the workman has been in gainful employment and he is a registered medical practitioner at Bilaspur and the same is evident from his letter head. The workman did not file medical certificate at the relevant time in the year 1977 regarding his illness to substantiate his long unauthorised absence from duty. The workman has raised this dispute after a considerable delay from the day his name was struck off from the Bank roll. It has also been pleaded by the management that the workman had filed a Writ Petition before the Honourable High Court of MP at Jabalpur after the lapse of 13 years and this petition was dismissed by the High Court. He had also filed a civil suit at Bilaspur challenging the validity of action of

management. This civil suit was also dismissed by the court. The workman had applied for leave vide his application dated 26-6-76 from 28-6-76 to 12-7-76 on the ground of certain difficult problems faced by him and not for attending his ailing mother. The workman never submitted any medical certificate in support of sickness at the relevant time. He remained absent from duty unauthorisely. The management has not committed any error in striking off the name of workman from the Bank rolls w.e.f. 20-1-77. The said order of the Bank is just, proper and does not call for any interference. And consequently the workman is not entitled to any relief.

4. Workman Shri Arjun Lal Gahwai in order to prove his case examined himself and management in order to defend the reference examined Smt. Kavit Paul, the then Manager (P&HRD), State Bank of India, Regional Office, Jagdalpur.

5. Both the parties have also filed documentary evidence which may be referred in the body of award where the need be.

6. I have heard workman Shri Arjun Lal Gahwai in person. Shri D.S.Soni, Manager (HR) of the management submitted that the management has nothing to say in oral argument. Both the parties submitted written argument:

7. I have very carefully gone through the record and specially the evidence of the parties on record.

8. In this reference, award was passed by my learned predecessor in office on 10-12-2001 which was challenged by the workman by way of WP No.716/2002 before the Hon'ble High Court of Chhattisgarh at Bilaspur. The Hon'ble High Court vide order dated 14-12-2006 has been pleased to quash the award and the matter is remitted to this tribunal to decide fresh.

9. It has been submitted in the written argument by the management that the workman after a lapse of 13 years of his removal from service filed a miscellaneous petition No. 3345/90 under Article 226 of Constitution against the Union of India and the Bank to make a reference of the above dispute to the tribunal and for reinstatement in Bank's service. That after hearing the petitioner the Division Bench of MP High Court while dismissing the petition observed that "the petitioner was appointed as cashier in Korba Branch of the State Bank of India on 6-1-71. It is alleged that when he was posted at Jagdalpur, he applied for leave from 18-6-76 on the ground of illness of his mother. He was on leave upto 31-1-77. But when he went to resume his duties on 1-2-77, he was not allowed to join. Cause of action occurred to the petitioner in February, 1977 and he is approaching this court under Article 226 of the constitution now in December 1990. We are, therefore, not inclined to entertain the petition. It is dismissed accordingly."

10. The above observations made by the Hon'ble High Court of MP is in Annexure-7. It has been further submitted that the workman thereafter filed a civil suit against the Bank in the year 1991 for the same cause of action i.e. reinstatement which was the subject matter of the above industrial dispute raised before the A.I.C.(C) Bhopal. That the management Bank appeared in the said suit and filed its reply. That the matter was contested by the parties. Ultimately the suit filed by the applicant was dismissed. The copy of above judgment is Annexure-8. It appears that the workman challenged the above decision of Civil Court under Article 227 of the Constitution of India in the Writ Petition No. 329/95 filed before the High Court of Madhya Pradesh at Jabalpur. That it is also crystal clear from the order dated 15-2-95 (Annexure-9) passed by the High Court that the counsel for the present applicant sought permission from the court to raise the dispute before the appropriate authority within 15 days of the order and accordingly the present direction was issued by the Hon'ble High Court of MP. It is needed to mention here that in the said order there is no mention of order dated 7-12-90 passed by the Division Bench of MP High Court in the earlier Writ Petition No. M.P.No.3345/90 filed by him because it was not brought to the notice of the court. Had this fact been brought to the notice of the Court the present Writ Petition No. 329/95 would have been dismissed in limine.

11. The record reveals that the workman had filed a miscellaneous petition No. 3345/90 before the Hon'ble High Court of MP, Jabalpur and the same was dismissed with the observation mentioned above. It is also evident from the record that thereafter the workman filed a civil suit as mentioned above for his reinstatement and it was held in the judgement of the Civil Suit that the suit between the parties comes under the class of Industrial Dispute and the suit filed was dismissed for the above reason. It is also apparent from the record that the workman challenged the above decision of Civil Court under Article 227 of the Constitution of India in WP No. 329/95 filed before the Hon'ble High Court of MP at Jabalpur wherein the counsel for the workman sought permission from the Hon'ble High Court to raise the dispute before the appropriate authority within 15 days of the order and accordingly the present direction was issued by the Hon'ble High Court of MP. This tribunal is not competent to consider the above argument advanced by the management regarding the order passed in WP.No.329/95 by the Hon'ble High Court of MP that in the said order, there is no mention of order dated 7-12-90 passed by the Division Bench of Hon'ble MP High Court in the earlier Writ Petition M.P. No.3345/90 filed by him and had this facts been brought to the notice of the court, the present Writ Petition No. 329/95 would have been dismissed in limine. In view of the order dated 14-12-06 passed in W.P.N o. 716/2002 by the Hon'ble High Court of Chhattisgarh, this tribunal is duty bound to decide this proceedings on merit according to law.

12. It is further mentioned in the Written Argument of the management that the workman is not entitled to any relief. In this respect reliance has been placed by the management on 2001-SCC-424 in the case of Indian Iron & Steel Company Ltd. versus Prahlad Singh wherein the Hon'ble Apex Court held that whether relief can be declined on the ground of delay and laches depends on the circumstances of each case. The reliance has also been placed on 2002(10)SCC-167 wherein the Hon'ble Supreme Court of India upheld the rejection of reference on the ground of delay by the Labour Court that the claim made after a period of 13 years without any reasonable or justifying ground, there was nothing on record to explain this delay as held by the CGIT. That the order of the CGIT cannot be said to be untenable or perverse. That in the light of aforesaid ruling, it is obvious that the workman is not entitled to any relief as claimed by him. It has also been submitted in the Written Argument that the cause of action occurred to the workman in the year 1971 and he has raised the present industrial dispute in the year 1995 and therefore the present reference is not maintainable. As has been already mentioned above, it has come in the Written Argument filed on behalf of the management that it is also crystal clear from the order dated 15-2-95 (Annexure-9) passed by the Hon'ble High Court that the counsel for the present workman sought permission from the court to raise the dispute before the appropriate authority within 15 days of the order and accordingly the present direction was issued by the Hon'ble High Court of MP. Since this reference order has been made by the Central Government on the directions issued by the Hon'ble High Court of MP, therefore on the ground of delay and laches, this tribunal finds itself unable to hold that the reference is not maintainable.

13. It is admitted to the parties that the workman was appointed as cashier-cum-clerk on 6-1-71 and was confirmed on 8-7-1971, in the year 1975 he was transferred to Jagdalpur branch, he took over charge there and proceeded on leave w.e.f. 28-6-76. It has been averred in the statement of claim by the workman that he and his mother were sick therefore he could not attend his duty, but time to time he informed the management regarding leave. That the management issued a letter dated 10-1-77 to him directing him to join duty within 20-1-77. That as he was not in a position to join duty, therefore went to join duty on 1-2-77. That the management refused to accept his joining report and did not permit him to join duty. That the management did not issue any order of his termination or of striking off his name from the rolls. Against the above, it has been pleaded in the WS of the management that the workman Shri Arjunil Gahwai was in a habit of absenting from duty without leave or prior intimation. That he also remained unauthorisedly absent from Jagdalpur branch intermittently. That consequently management advised Shri Gahwai by telegram to report for duty on 29-10-76 (Annexure-I) followed by 2 reminders dated 30-11-76

(Annexure-II) & 10-12-76 (Annexure-III) by means of registered letters. That despite the directions given by the Branch Manager, the workman did not care to report on duty till 9-1-77. That thereafter the workman vide letter dated 10-1-77 (Annexure-4) was finally directed to report for duty with the Bank on 20-1-77 failing which his name would be struck off from the Bank Rolls. That since the workman neither sent any communication to the Bank in response to the above letters nor joined the duty, his name was struck off from the Bank rolls.

14. It has come in evidence of workman Shri Arjunlal Gahwai that he had gone to Bilaspur to see his ailing mother on 28-6-76 after getting 4 days CLs sanctioned and due to illness of his mother, he had given applications for extention of leave and during that period he also fell ill. This witness has been cross-examined by the management but nothing has come out in his evidence of cross-examination which may indicate that he did not give application for extention of his leave. So far as the evidence of management's witness Smt. Kavit Paul is concerned, it has not been stated by her in her affidavit that the workman did not give applications for extention of his leave. Under the circumstances, the uncontrovorted oral evidence of Shri Gahwai will prevail and it is proved from the said evidence that he had given applications for extention of leave.

15. The case of the management is that the workman remained unauthorisedly absent at Jagdalpur Branch intermittently. He was in a habit of absenting himself from duty without leave application and prior intimation. Consequently the Branch Manager, Jagdalpur Branch advised Shri Gahwai by telegram to report on duty on 29-10-76 followed by two reminders dated 30-11-76 (Ex M/3) & 10-12-76 (Ex M/4) by means of registered letters. Despite the above directions given by the Branch Manager of the Bank Shri Gahwai did not care to report for duty on 9-1-77 and thereafter the workman vide letter dated 10-1-77 (Annexure IV) was finally directed to report for duty at Branch itself by 20-1-77 failing which his name would be struck off from the Branch rolls. It is further the case of the management that because the workman neither sent any communication to the Branch Manager in response to the above letters nor joined duty, his name was struck off from the Branch rolls. It has been deposed by the management's witness Smt. Kavit Paul that the Bank has asked Shri Gahwai to report for duty vide memo dated 10-11-76, a copy of the said memo is Exhibit M/2. That he was again informed vide reminders dated 30-11-76 and 10-12-76, copies of which are marked as Exhibit M/3 & M/4 respectively. It has also come in the evidence of management's witness Smt. Kavit Paul that the workman was habitually absenting from duty unauthorisedly without any reason. That he was absent from 24-8-75 to 30-9-75, 1-10-75 to 30-11-75 & from 22-12-75 to 1-2-76. It has been deposed in her affidavit by Smt Kavit Paul that the workman was again absent from 28-6-76 to 12-7-76 and thereafter till 20-1-77. It is alleged

that the above circumstances resulted in striking off his name from the rolls. On being cross-examined, this witness deposed that no disciplinary proceeding was initiated against the workman for his alleged misconduct. She deposed that from 20-1-77, the name of workman was struck off from the rolls. She further deposed that the said order of striking off the name of the workman from the rolls is not available. It is crystal clear from the above that the workman was confirmed on the post of cashier-cum-clerk and according to the case of the management, his name was struck off from the rolls for remaining unauthorisedly absent from duty in spite of notice given to him for joining duty. For the above misconduct of the workman, no disciplinary proceeding was drawn against him and his name was struck off from the rolls of the Bank. It has not been shown by the management under what rules or under what legal procedure, the name of the workman was struck off from the rolls for remaining unauthorisedly absent from duty. Not only this, it has not come in the evidence of the management as to which authority passed the order of striking off the name of the workman from the rolls. More so, the management's witness has specifically stated that the order of striking off the name of the workman from the Bank's roll is not available.

16. Thus the management has failed to prove that the name of the workman was struck off from the Bank's rolls on the basis of any order passed by any Competent Authority.

17. It has been submitted by the workman that if it is presumed for the sake of argument only that he remained absent from duty unauthorisedly without intimation or application for leave, he has not committed the act of "Gross Misconduct" and at the most, he can be held guilty for the act of "Minor misconduct" for which he cannot be legally terminated from the service. In this respect, he placed reliance on the text of National Industrial Tribunal (Bank Disputes) Award on Industrial Disputes between certain Banking Companies and Corporations and their workmen by Presiding Officer written by Mr. Justice Kantilal T. Desai (Chief Justice of High Court of Gujarat) 1962 Edition. In the said text book expression "Gross Misconduct" has been defined in para 521 (4) at Page 342. The relevant portion of the said para is reproduced as under:—"By the expression "Gross Misconduct" shall be meant in all the following acts and omissions on the part of an employee:

- a.
- b.
- c.
- d.
- e.
- f. habitual doing of any act which amounts to "minor misconduct" as defined below, "habitual" means a course of action taken or

persisted in notwithstanding that atleast on 3 previous occasions, censures or warnings have been administered or an adverse remark has been entered against him;

- g.
- h.
- i.
- j.
- k.
- l.

18. The expression "minor misconduct" is defined in para 521(6) at page 342 of the above text book. The relevant portion is reproduced as under :—

(6) By the expression "minor misconduct" shall be meant any of the following acts and omissions on the part of an employee:

- a. absence without leave of overstaying sanctioned leave without sufficient grounds;
- b.
- c.
- d.
- e.
- f.
- g.
- h.
- i.

In sub-para-7 of the above para, the punishment for committing the minor misconduct is given as follows :

(7) An employee found guilty of minor misconduct may :

- j. be warned or censured; or
- k. have an adverse remark entered against him; or
- l. have his increment stopped for a period not longer than six months.

The punishment for committing gross misconduct is given in sub-para-5 of the above para as follows :—

(5) an employee found guilty of gross misconduct may :

- a. be dismissed without notice; or
- b. be warned or censured, or have an adverse remark entered against him;
- c. be fined; or
- d. have his increment stopped; or

- e. have his misconduct condoned and be merely discharged.

Now it is to be considered whether the alleged act committed by the workman comes within the expression was "gross misconduct" as defined in the above text book. It has come in the evidence of Smt. Kavit Paul management's witness that the workman was habitually absenting from duty unauthorisely without any reason. He was absent from 24-8-75 to 30-9-75, 22-12-75 to 1-2-76 & 28-6-76, 1-10-75 to 30-11-75 to 12-7-76. I have very carefully gone through the entire evidence of the management. There is no evidence on record that the management took any disciplinary action against the workman for his habit of remaining absent from duty unauthorisely without intimation or without application for leave.

19. In para 521(4)(f), the following constitutes the act of "gross misconduct"—

"Habitual doing of any act which amounts to "minor misconduct", habitual meaning a course of action taken or persisted in notwithstanding that atleast on 3 previous occasions, censure or warnings have been administered or an adverse remark has been entered against him."

There is no evidence of the management on record that for the workman's habit of remaining absent from duty intermittently, he was censured or warnings had been administered to him or an adverse remark had been entered against him. Therefore, it cannot be held that the workman was guilty of committing gross misconduct by remaining absent from duty intermittently. Sub-para-5(a) of the above para discloses that an employee found guilty of the gross misconduct may be dismissed without notice. Under the circumstances, the workman could not be dismissed for committing gross misconduct. The workman's act of remaining absent from duty intermittently comes under the expression minor misconduct as defined in sub-para-6(a) of the above para. Sub-para-6(a) reads as follows—

"By the expression "minor misconduct" shall be meant any of the following acts or omissions on the part of an employee :

- a. absence without leave or overstaying sanctioned leave without sufficient grounds;

The punishment is prescribed in sub-para-7 of the above para as follows :—

(6) an employee found guilty of minor misconduct:

- a. may be warned or censured; or
- b. have an adverse remark entered against him; or
- c. have his increment stopped for a period not longer than six months.

Thus it is clear from the above that the workman could not be legally terminated from service on the ground

of committing minor misconduct i.e. for remaining absent from duty unauthorisely. His name could not be struck off from the rolls of the Bank for his above act.

20. It is clear from the evidence of management's witness Smt. Kavit Paul that no disciplinary action was taken against the workman for his remaining absent from duty unauthorisely meaning thereby that no DE was conducted against the workman for his remaining absent from duty unauthorisely. It is admitted to the parties that the workman was a confirmed employee of the Bank and was posted as cashier-cum-clerk. The management without complying with the mandatory provisions of Sec. 25 of the ID. Act struck off his name from the Bank's rolls which is quite illegal. It is therefore concluded that the action of the management in striking off the name of Shri Arjun Lal Gahwai ex-cashier-cum-clerk from the Bank's rolls w.e.f. 20-1-77 is illegal and unjustified.

21. Now it is to be considered as to what relief the workman is entitled to.

22. The workman has not made any averment in the statement of claim that after striking off his name from the rolls of the Bank, he was not gainfully employed anywhere. There is no evidence of the workman that after termination, he was not gainfully employed. Against the above, it has come in the evidence of management's witness Smt. Kavit Paul that the workman is the holder of diploma of Registered Medical Practitioner and his letter head on record reveals that he is a Medical Practitioner at Bilaspur. The workman has no doubt denied in his oral evidence that he carries on medical practice at Bilaspur though he has admitted that he is a Registered Medical Practitioner. It is, therefore, not proved by the workman that after his termination from the Bank service, he was not gainfully employed. Therefore according to law laid down by the Hon'ble Apex Court in 2005(5) SCC-591 General Manager, Haysam Railways versus Rudhan Singh & 2005(6) SCC-221 M.L. Birla Folkar versus State of MP the award of reinstatement without back wages shall be the appropriate relief in this case. The Hon'ble Supreme Court of India in 2004 LLJ-794 in the case of Municipal Council, Sujanpur versus Gurinder Kumar held that the burden of proof to establish that the workman was not gainfully employed is not on the workman himself. It is, therefore, concluded that the workman is entitled to the relief of reinstatement but without back wages.

23. In view of the above, it is, hereby, held that the action of the management of SBI in striking off the name of Shri Arjun Lal Gahwai, ex-cashier-cum-clerk from the Bank rolls w.e.f.20-1-77 is not legal and justified and he is entitled to the relief of reinstatement without back wages with cost of this reference. The Award is passed accordingly.

24. Copy of the award be sent to the Government of India, Ministry of Labour as per rules.

C. M. SINGH, President of P.R.

नई दिल्ली, 26 मार्च, 2007

का.आ. 1108.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारी/इय न्यायालय, नं. II, मुम्बई के पंचाट (संदर्भ संख्या सी जी आई शी/83 ऑफ 2002) को प्रकाशित करती है, जो केन्द्रीय सरकार द्वा 26-3-2007 को प्राप्त हुआ था।

[सं. एल-40012/184/2002-आई.आर.(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th March, 2007.

S.O. 1108.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-2/83 of 2002) of the Central Government Industrial Tribunal-cum-Labour Court, No.II, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Department of Post and their workmen, which was received by the Central Government on 26-3-2007.

[No. L-40012/184/2002-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

Present

A.A. Lad, Presiding Officer

Reference No. CGIT-2/83 of 2002

Employers in relation to the Management of Department of Posts

The Sr. Supdt. of RMS
Department of Posts,
Air Mail Sorting Division
Dadar, Mumbai 400014.

Vs.

Their Workmen

Shri Niting T. Dalvi
51/2, Shetye Market Building
Parel Bhoiwada G.K. Road,
Mumbai-400012.

APPEARANCES:

For the Employer : Mr. V. Narayanan,
Advocate.

For the Workmen : Mr. V.J. Amberkar,
Advocate.

Mumbai, dated 6th March, 2007

AWARD PART-I

The Government of India, Ministry of Labour by its Order No. L-40012/184/2002-IR (DU) dtd. 31-10-2002 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Department of Posts, Mumbai in terminating the services of Sh. Nitin T. Dalvi w.e.f. 23-12-1999 is justified? If not, what relief the workman Shri Nitin T. Dalvi is entitled to?"

2. To support the subject matter referred in the reference, second party filed Claim Statement at Ex-7 stating that, the Department of Posts is one of the Department of Central Govt. engaged in activity of printing and selling of various stamps, post cards, inland, money orders forms for telegrams where more than 15000 employees are working all over Mumbai. It has branches all over India.

3. Second Party was engaged as Mailman, drawing wages Rs. 2450/- p.m. He has 9 yrs continuous service.

4. He was chargesheeted *vide* chargesheet dt. 25-11-97 observing that, he was found absent without permission between 27-12-95 to 7-3-96. It was also alleged that, he did not inform about his police custody which he suffered from 8-3-96 to 15-3-96. He state that he had been to Shirdi on 26-12-95 where he stayed till 7-3-96. Reading the newspaper he learnt that, Police were hunting him. So he approached them, where he was arrested and he was kept in judicial custody from 8-3-96 to 15-3-96 for investigation by the custom authority. In fact it was duty of Custom authority to inform about his arrest. As a result of arrest, he was unable to inform First party about his absenteeism and his custody was not considered to excuse him from not informing about leave. According to him complaint was lodged by custom authority and said is pending before Esplanade Court. He was terminated due to absenteeism during that period levelling charges of remaining absent on duty without permission and leaving headquarters without prior permission. Though he brought all those facts into the notice of Inquiry Officer, who conducted inquiry on absenteeism, he was held guilty of misconduct. Even his leave at credit was not considered while awarding punishment. So he states that enquiry was not fair and proper and findings given on these grounds are perverse. He also states that, punishment of dismissal is disproportionate for simple absenteeism. Hence he pray to set aside the dismissal order dt. 6-3-99 observing enquiry not fair and proper and finding, perverse.

5. This is disputed by First Party by filing Written Statement at Ex-8 stating and contending that, First Party is not an 'industry' as it is engaged in carrying mail by rail, road, water and air. Since it is not an industry, Second Party

cannot be called as a 'workman' and as a result of that, this Court has no jurisdiction to try the reference.

6. It is also contended that, Departmental Enquiry was conducted against Second Party after giving fair opportunity and reading the evidence, competent authority awarded punishment. The appeal preferred by Second Party was rejected on merit. In all those reasonable opportunity was given to Second Party. He never made grievances about fair' opportunity not given in enquiry. Even finding of Inquiry Officer observing "absent without permission" is based on the facts revealed in the enquiry. Even Second Party admitted that, without permission he left for Shirdi and did not apply in due course for leave. Even he admits that, he did not intimate about his arrest and criminal case filed against him. It is also stated that, he was absent from 27-12-95 to 7-3-96 and nothing intimated about his custody from 8-3-96 to 15-3-96. By all theses he committed breach of Rule 3-C of Central Civil Services (Conduct) Rules 1964 and invited Departmental enquiry where he found guilty of absenteeism without permission. Since he did not complain about opportunity not given in enquiry and about his absenteeism without prior permission, question does not arise to set aside enquiry and finding given observing not fair and proper and finding perverse. Besides absenteeism is misconduct which invite punishment like dismissal. Said punishment was given which is just and proper. So it is submitted that, reference be rejected on all these counts.

7. In view of above pleadings my Learned Predecessor framed issues at Ex-II Out of those Issues nos. 1 to 3 were treated as preliminary issues which are answered as follows :

<u>Issues</u>	<u>Findings</u>
1. Whether the management proves that this Tribunal has no jurisdiction as averred in Written Statement para. 1 ?	No
2. Whether the domestic enquiry conducted against the workman was as per the Principles of Natural Justice?	Yes
3. Whether the findings of the inquiry officer are perverse?	No

REASONS**Issue No. 1**

8. This issue is framed on the basis of pleading taken by First Party in Written Statement where it is stated that, First Party is not an industry and its activities does not cover under Industrial Disputes Act and so this Tribunal has no jurisdiction. Except this aversion nothing is pointed out neither in the evidence nor in the Written Submissions submitted as to how this Tribunal has no jurisdiction. Even the point of jurisdiction is rather forgotten by First Party when it submitted its Written Arguments at Ex-19 and it

goes on arguing on the punishment and how enquiry fair and proper. It is matter of record that, reference is sent for adjudication treating Second Party as workman. The status of Second Party as 'Workman' is not challenged. Simply it is stated that, activities of First Party does not cover under 'Industrial Disputes Act'. When no seriousness is given by First Party on this issue, I do not find it necessary to spend time and words to discuss more on this issue. Besides the reference is made by Central Government to this Tribunal and observing this Tribunal has jurisdiction. So I conclude reference is maintainable before this Tribunal.

Issue No. 2 & 3

9. By these issues, enquiry is challenged and so its findings. In that respect if we peruse the evidence of Second Party which he filed in the form of affidavit at Ex-13, we find, he goes on repeating the story as mentioned in the Claim Statement. In the cross he admits that, he was arrested by Police on 10-4-96. He also stated that, he does not remember whether he complained about fair opportunity not given in the enquiry. He is silent about findings of Inquiry Officer. Simply he states that, his leave at credit was not considered by the Inquiry Officer to regularise absentism. Even while taking' cross of Management witness whose affidavit is filed at Ex-15, no specific case is made out by Second Party. Though there is suggestion to the witness that, Second Party applied for leave but said application was not considered by First Party, is not proved by calling such application or by showing any symptoms of giving such application to the First Party. From all these, it reveals that, Second Party was arrested by Police. and he was absent from 27-12-95 to 7-3-96. Even it is a matter of record that, he was under custody from 8-3-96 to 15-3-1996. Even that ground is taken by Second Party stating that, due to his custody, he unable to apply for leave. Even his case of leaving for Shirdi without intimation is rather unusual. In that respect he admits that, criminal case is pending against him and was in Metropolitan Magistrate Court filed under Customs Act. Even copy of judgement of said case is produced by Second Party himself dt. 11-7-2006. All this reveals that, Second Party was arrested by Police. He did not intimate about his arrest to First Party. He has no evidence to show that, he applied for leave, when he left for Shirdi. Question arises what prevent him in reporting to first party regarding his leaving for Shirdi? No reason is given of any type by the Second Party. Just he goes on saying that, Customs Authority should have intimated about his arrest to First Party. On the contrary charges levelled against Second Party that he failed to intimate about his arrest and about reason behind remaining absent from duty are worth to consider. Moreover no grievances are made by him regarding opportunity not given in enquiry and procedure adopted in enquiry. Even nothing is stated by him why enquiry conducted should be treated completed without following principles of natural-justice? When Second Party has not informed about absentism & silent

on his case and when admittedly, he found absent without prior permission and did not inform about his arrest, in my considered view for what enquiry should be treated not just and proper and findings perverse? It reveals that, enquiry was conducted where Second Party opted opportunity given and face it. One has to consider that, simple charge of absentism and charge of not intimating about his arrest is leveled against him. These charges are admitted to him. When he did not intimate about his absence vis-a-vis about his arrest, where question arise to observe finding perverse? When he himself admits that, he did not apply for leave and left abruptly for Shirdi that too with his friend and when arrest not intimated what can be concluded? And above all, he has not brought on record what leave was at his credit? Even in the Court, he did not point out that fact to conclude that, such absentism can be regularised by considering his leave at credit. Besides judgement of Criminal Case filed against him supplied by him reveals he was prosecuted under serious charge of Fraudulent occasion or attempt at evasion of import of seized current account worth of Rs. 1,52,84,572.75 out of India. If we peruse all these coupled with the evidence lead, I conclude that, enquiry is fair and proper and findings not perverse.

10. Number of cases are referred by Second Party's advocate with his Written Submissions. In fact those are on the point of punishment which in my considered view does not required to be considered at this stage as we are on deciding Part-I Award.

In view of discussions above, I conclude that, enquiry is fair and proper and findings not perverse. Hence the Order.

ORDER

Enquiry declared fair and proper and findings not perverse

Both parties to participate in the reference on the point of quantum of punishment.

Date 6-3-2007

A. A. LAD, Presiding Officer

नई दिल्ली, 26 मार्च, 2007

कल. १। ११०९.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को भाग 17 के अनुसरण में, केन्द्रीय सरकार कंटोर्मेंट बोर्ड के प्रबंधताल के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में लिए औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय अधिकार के पंचाट (संदर्भ संख्या) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-3-2007 को प्राप्त हुआ था ।

[सं. एल-13012/10/99-आई.आर.(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th March, 2007

S. 1109.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award of the Industrial Tribunal-cum-Labour Court, Ajmer as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Cantonment Board and their workman, which was received by the Central Government
on
26-3-2007.

[No. L-13012/1u/99-IR(DU)]
SURENDRA SINGH, Desk Officer

अनुबंध

श्रम न्यायालय एवं औद्योगिक न्यायाधिकरण, अजमेर
(राजस्थान)

सी आई टी आर नं. 17/1999

(रेफरेंस संख्या एल-13012/10/99/आई आर/डी.यू/
दिनांक 27-10-99)

श्री सम्पतकुमार निवासी लाखन कोटडी, चांदी का कुँआ, दरगाह
बाजार, अजमेर

-प्रार्थी

बचाम

दी एक्जीक्यूटिव आफिसर कॉन्टोर्नमेंट बोर्ड (राजस्थान) नसीराबाद
जिला अजमेर

-अप्रार्थी

.....

समक्ष : श्री गंगासिंह शेखावत, आर. एच. जे. एस.

प्रार्थी की ओर से : श्री पी.डी. खना, अधिवक्ता

अप्रार्थी की ओर से : श्री रामस्वरूप, राजकीय अधिवक्ता

अवार्ड

दि. 24-2-2007

श्रम मंत्रालय केन्द्र सरकार द्वारा प्राप्त रेफरेंस इस प्रकार
है :-

"Whether the action of the executive officer, Cantonment Board, Nasirabad Distt. Ajmer in terminating the services of Sh. Sampat Kumar S/o Sh. Kishan Singh Harizan, Ex-Safaiwala w.e.f. 1-12-87 is legal and justified? If not, what relief the concerned workman is entitled to?"

प्रार्थी ने क्लेम के विवरण में अकित किया है कि प्रतिपक्षी ने नियोजन कार्यालय अजमेर से मांग कर प्रार्थी को सफाईवाला कर्मचारी के पद पर दिनांक 24-7-84 से नियुक्त किया था। प्रार्थी ने 24-7-84 से रोजाना 94 तक बिना किसी शिकायत के ईमानदारी से कार्य किया। प्रार्थी ने दि. 17-11-87 को स्वयं का परिवार नियोजन का आपरेशन करवाया था जिससे उसकी तबियत खराब होने से दि.

1-12-87 से 11-9-88 तक वह सेवा पर उपस्थित नहीं हो सका। जिसकी सूचना प्रार्थी ने पिजवा दी थी। प्रतिपक्षी ने प्रार्थी के अवकाश के प्रार्थना पत्रों को स्वीकार नहीं किया और प्रार्थी को अनाधिकृत रूप से गैर हाजिर मानते रहे। प्रतिपक्षी ने अपर मुख्य न्यायिक मजिस्ट्री नसीराबाद के समक्ष प्रार्थी के विरुद्ध छावनी अधिकी धारा 178 के अन्तर्गत अनाधिकृत अनुपस्थिति के सम्बन्ध में एक दायित्वक प्रकरण प्रस्तुत किया। जिसमें छोटे अपराध के कारण प्रार्थी को परिवीक्षा का लाप्प देते हुए प्रताङ्कन पर छोड़ा गया। उक्त निर्णय से प्रार्थी की सेवाएं समाप्त नहीं की जा सकती है। प्रार्थी ने दायित्वक न्यायालय के निर्णय दिनांक 2-11-93 के बाद प्रार्थी को इयूटी पर लेने हेतु लिखाता रहा। किन्तु उसे इयूटी पर नहीं लिया गया। प्रार्थी की सेवामुक्ति अनुचित है। अतः दिनांक 29-10-98 को प्रार्थी ने समझौता अधिकार के समक्ष यह विवाद उठाया और वार्ता विफल होने पर यह विवाद प्रस्तुत हुआ है। सेवामुक्ति के पूर्व प्रतिपक्षी ने न कोई नोटिस दिया और क्षतिपूर्ति की राशि भी और ना ही कोई विभागीय जांच की प्रार्थी के विरुद्ध द्वेषता पूर्वक कार्यवाही की गई है। प्रार्थी का रोगी प्रेषण-पत्र नहीं माना। प्रार्थी ने 10 वर्ष की सेवा अवधि पूरी कर ली प्रतिपक्षी का सेवा समाप्ति का आदेश दि. 2-11-93 अवैध है अतः प्रार्थी की सेवा निरंतर मानते हुए गत वेतन भत्तों सहित पुनर्स्थापित करने की प्रार्थना की है।

प्रतिपक्षी ने डत्तर में अकित किया है कि प्रार्थी वास्तविक रूप में 1-12-87 से निरंतर अनुपस्थित चल रहा है। अनुपस्थिति की सूचना नहीं देने के कारण प्रार्थी के विरुद्ध छावनी अधिनियम की धारा 178 के परिवाद में प्रार्थी को दोषी मानते हुए दायित्वक न्यायालय ने दिनांक 2-11-93 के आदेश के द्वारा प्रताङ्कन से दण्डित किया है उसके बाद भी प्रार्थी अनुपस्थित रहा है अतः क्लेम निरस्त करने की प्रार्थना की है।

प्रार्थी ने अपने क्लेम की सम्पुष्टि में स्वयं का शपथ-पत्र प्रस्तुत कर प्रतिपरीक्षण करवाया है। प्रलेखीय साक्ष्य में प्रदर्श डब्ल्यू-1 से प्रदर्श डब्ल्यू-12 प्रलेखों की प्रतियां प्रदर्शित करवाकर प्रस्तुत की है। प्रतिपक्षी ने विष्णु लाल तंवर भू-अभिलेख अधिकारी का शपथपत्र प्रस्तुत कर प्रतिपरीक्षण करवाया है। किन्तु प्रलेखीय साक्ष्य प्रस्तुत नहीं की है।

उभय पक्ष का श्रवण किया और पत्रावली का अवलोकन किया। प्रार्थी ने निम्न दृष्टांत प्रस्तुत किये हैं :-

1. 1996 लेब आई सी (राज.) 1002
2. 2006 लेब आई सी (राज.) 3885
3. 2006 लेब आई सी 2903
4. 2004 लेब आई सी (राज.) 244
5. 2005 एल. सी. एस. एल. आर. 579
6. 2005 (3) आर. एल. आर. 172
7. 1975 ए.आई.आर. (एस सी).2216
8. 1985 (2) एस. एल. आर. एल.सी. 109

मैंने उक्त दृष्टांतों का सम्मान अद्ययन कर लिया है।

उभय पक्ष ने अपने-अपने प्रार्थना पत्र और उत्तर में अंकित कथनों का बहस में पुनरावृति की है। प्रस्तुत विवाद में यह निर्णीत करना है कि क्या प्रतिपक्षी ने प्रार्थी को 1-12-87 से सेवामुक्त किया अथवा प्रार्थी स्वयं अनुपस्थित रहकर सेवा छोड़ गया। यह स्वीकृत तथ्य है कि प्रार्थी दि. 1-12-87 से 11-2-88 तक 57 दिनों तक अनुपस्थित रहा। प्रार्थी के अनुसार उसने परिवार नियोजन का आपरेशन दि. 17-11-87 को करवाया था। जिससे उसकी तबियत खराब होने से वह अनुपस्थित रहा। इसके विपरीत प्रतिपक्षी के अनुसार प्रार्थी ने कोई बीमारी का प्रमाण-पत्र प्रस्तुत नहीं किया और यह स्वैच्छा से अनुपस्थित रहा है। इस अवधि में अनुपस्थिति के कारण प्रतिपक्षी ने धारा 178 छावनी अधिनियम के अन्तर्गत दाण्डिक न्यायालय में परिवाद पेश किया जिसमें प्रार्थी को अपराध स्वीकारेंवित के आधार पर दाण्डिक न्यायालय ने 2-11-93 को परिवीक्षा का लाभ देते हुए प्रार्थी को प्रताङ्गना देकर छोड़ा। स्वयं की बीमारी के सम्बन्ध में प्रार्थी ने कोई प्रमाण-पत्र प्रस्तुत नहीं किया और न ही अनुपस्थिति के सम्बन्ध में कोई सूचना दी और न ही उसने कोई इस सम्बन्ध में प्रलेखीय साक्ष्य, ही प्रस्तुत की है। सेवा से अनुपस्थिति रहना भी छावनी अधिनियम के अन्तर्गत दाण्डिक है। जिसके लिये प्रार्थी को दाण्डित किया गया है। प्रार्थी ने अपने क्लोम में अनुपस्थिति का कारण परिवार नियोजन के आपरेशन से स्वयं की तबियत खराब होने का तथ्य अंकित किया है जबकि शपथ-पत्र में उसने स्वयं की एवं अपनी पत्नी की तबियत खराब होना बताया है। दि. 9-4-99 के प्रस्तुत प्रार्थना पत्र प्रदर्श डब्ल्यू-5 में अनुपस्थिति का कारण पत्नी की बीमारी और शोषणीय आर्थिक स्थिति बताया है। इस प्रकार अनुपस्थिति का कारण प्रार्थी ने भिन्न-भिन्न स्तरों पर भिन्न-भिन्न बताया है और उसकी सम्पुष्टि में कोई प्रमाण-पत्र प्रस्तुत नहीं किया है। प्रार्थी के पास ना स्वयं की बीमारी का प्रमाण-पत्र है और ना अपनी पत्नी की बीमारी का मेडिकल प्रमाण-पत्र है। प्रार्थी ने अवकाश हेतु कोई आवेदन भी नहीं किया। न ही कोई अनुपस्थिति की सूचना दी। दि. 11-2-88 के बाद ही दाण्डिक न्यायालय के निर्णय दि. 2-11-93 तक कोई आवेदन नहीं किया और कार्य पर उपस्थित भी नहीं हुआ। दाण्डिक न्यायालय के निर्णय के बाद 4-12-93 से (प्रदर्श डब्ल्यू-3) और उसके बाद डब्ल्यू-5 द्वारा प्रार्थी ने इयूटी पर लेने हेतु आवेदन किया है। जो अत्यंत विलम्बित है। इस प्रकार स्पष्ट है कि प्रार्थी को सेवामुक्ति नहीं की गई बल्कि 1-12-87 से वह स्वयं अनुपस्थिति रहकर कार्य छोड़कर चला गया। प्रार्थी न अपना विवाद 29-10-98 के लगभग 11 वर्ष पश्चात् अत्यंत विलम्ब से उठाया है और विलम्ब का कोई कारण स्पष्ट नहीं किया है। अतः विलम्ब से विवाद उठाना घातक है। जब अनुपस्थिति दाण्डिक है तो अनुपस्थिति के सम्बन्ध में नोटिस देकर जांच किये जाने की आवश्यकता नहीं है। अतः प्रार्थी कोई अनुषोध प्राप्त करने का अधिकारी नहीं है।

आदेश

फलत: विवाद का उत्तर इस प्रकार से दिया जाता है कि एकजीक्यूटिव आफिसर, कंटोरेंट बोर्ड द्वारा श्री सम्पत्कुमार पुत्र किशनसिंह हरिजन सफाई वाले की सेवाएं दि. 1-12-87 से समाप्त नहीं की बल्कि श्री सम्पत्कुमार स्वैच्छा से 1-12-87 से अवैध रूप

से अनुपस्थित रहा और सेवा छोड़कर चला गया। अतः प्रार्थी कोई अनुतोंग प्राप्त करने का अधिकारी नहीं है।

पदार्पण आज दि. 24-2-2007 को खुले न्यायालय में लिखवाया जाकर सनाया गया जिसकी प्रति नियमानुसार प्रकाशनार्थ केन्द्र सरकार को दिए गये जावे।

जी. एस. शेखावत, न्यायाधीश

नई दिल्ली, 26 मार्च, 2007

का.आ. 1110.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विषय के प्रबंधत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम/श्रग न्यायालय नं.-II चण्डीगढ़ के पंचाट (संदर्भ संख्या 335/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-3-2007 को प्राप्त हुआ था।

[सं. एल-40012/271/2000-आई आर (डी.यू.)]

सुरेन्द्र सिंह, डैस्क अधिकारी

New Delhi, the 26th March, 2007

का. 1110.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 335/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 26-3-2007.

[No. L-40012/271/2000-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT

SHRI KULDIP SINGH : Presiding Officer

Case No. I.D. No. 335/2005.

Registered on 21-9-2000

Date of Decision 26-2-2007.

Jagdev Singh S/o Shri Hari Singh R/o Village Kajheru,
Chandigarh

.....Petitioner

Versus

The General Manager, Telecom, Sector-18, Chandigarh

.....Respondent

APPEARANCE

For the Workman : Shri A.K. Batra Advocate

For the Management : Shri G.C. Babbar Advocate

AWARD

The workman continues to be absent. Management appears through Counsel. The workman was not present on the last dates fixed except on 8th Dec., 2006, on which day he suddenly appeared and has again absented. This speaks of his sincerity to the prosecution of his case in this Tribunal.

The Government of India *vide* their order No. L-40012/271/2000/IR(DU) dated 29th August, 2000 referred the following dispute for the adjudication of this Tribunal :—

"Whether the action of the Management of General Manager, Telecom, Chandigarh in terminating the services of Shri Jasbir Singh S/o Shri Hari Singh is just and legal? If not, to what relief the workman is entitled?"

The notice of the reference was given to the parties who appeared. The workman appeared through representatives whereas Mr. G.C Babbar, Advocate appeared for the Management. The workman filed the claim petition, but thereafter he stopped appearing. So far, the Management has not filed the Written Statement. The parties have not filed the affidavits nor have produced any evidence to support their respective claims. As noted above, the workman does not seem to be sincere to prosecute his case. On the file I do not find any evidence to show that the workman was engaged by the Management and it is they who had terminated his services. There is also no evidence to show that such a termination was just and legal. In the circumstances the loser is the workman. Therefore, the reference is answered against him holding that he is not entitled to any relief. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 26 मार्च, 2007

का.आ. 1111.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अरनाकुलम के पंचाट (संदर्भ संख्या 83/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-3-2007 को प्राप्त हुआ था।

[सं. एल-40012/567/2000-आई आर (डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th March, 2007

S.O. 1111.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 83/2006) of the Central Government Industrial Tribunal/ Labour Court, Ernakulam as shown in the Annexure in

the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 26-3-2007.

[No. L-40012/567/2000-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM****PRESENT:**

Shri P. L. Norbert, B.A., L.L.B., Presiding Officer
(Monday the 12th day of March, 2007/21st Phalgun,
1928)

I. D. 83/2006

(I.D. 9/01 of Labour Court, Ernakulam)

Workman	T.P. Maniyan S/o Purushan Thundiparambil House, Mulanmkad P.O. Ernakulam.
Management	The Sub-Divisional Engineer (Phones) Ayyappankavu, K.C. Avenue St. Vincent Gross Road, Kochi -682 018. Adv. Shri T. C. Krishna

AWARD

This is a reference made by Central Government under Section 10 (1) (d) of Industrial Disputes Act, 1947 for adjudication. The reference is :

"Whether the action of the Sub-Divisional Engineer, Phones (Ayyappankavu), Cochin in terminating the services of Sh. T.P. Manian, Casual Labourers from service during the month of Feb. 1998 is just, fair and legal? If not, to what relief the workman is entitled?"

2. The facts of the case in brief are as follows :

According to the claimant he was engaged as casual labourer in Ayyappankavu Sub-division of Telecom Department from September, 1996 to February 1998. Thereafter he was not given work. However he was given an experience certificate for having worked 310 days. Though requests were made for re-employment there was no favourable response. Sufficient work is available under the management. But they are not engaging the claimant. There is an attempt to recruit fresh casual labourers. Since the claimant is a 'workman' coming within the definition of

I.D. Act, he is entitled to be preferred to fresh hands. The termination of claimant is in violation of the provisions of I.D. Act. The claimant is entitled to be reinstated with consequential benefits.

3. The management in their written statement contends that the dispute is belated. The reference is bad for non-rejoinder of necessary parties. There was a ban on recruitment or engagement of casual labourers as per letter of Telecom Department dated 22-6-1988. Later as per O.M. dated 25-3-1998 engagement of casual labourers for work of contingent nature for a period of less than 15 days at a time and 60 days in a year, was permitted. Later as per O.M. dated 3-11-1999 the condition was relaxed by permitting engagement of casual labourers up to a period of 30 days at a time and 100 days in a year. At no point of time the workman was engaged for more than 100 days in a year. No experience certificate was issued from the department to the workman. The so-called work experience is a forged document and the original is to be produced by the workman. The workman was engaged for 28 days during 2000 even after raising an industrial dispute. However he has no legal right to claim reinstatement.

4. In the light of the above contentions, the only point that arises for consideration is :

"Whether the claimant had worked continuously for a period of 240 days preceding his termination?"

The evidence consists of the oral testimony of WW1 and Exts. W1 to 6 on the side of workman and MW1 and Exts. M1 and M2 on the side of management.

5. The point:

It is the case of the workman that he had worked from September, 1996 to February 1998 for more than 310 days and thereafter from 3-1-2000 for 28 days. An industrial dispute was raised before Labour Commissioner in December, 1999. Thereafter also he was engaged for 28 days. But the management denies to have engaged the claimant for a period of 310 days or more continuously during any year though they admit that from 3-1-2000 for 28 days he was engaged. The dispute was raised for non-engagement from March, 1998 onwards. Therefore the issue to be determined is, had the worker continuously worked for 240 days for a period of 12 calendar months prior to his termination in order to claim any right under I.D. Act. To prove that he had worked continuously for the above period, the burden is on the worker.

The position is clarified in Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan (2004) 8 SCC 161, Municipal Corpn. Faridabad v. Siri Niwas (2004) 8 SCC 195, HUDA v. Jagmal Singh 2006-HI-L.L.J. 152 and Yellatti R.M.v. Assistant Executive Engineer 2006-I-L LJ. 442.

It is observed in the above judgements that the burden of proof that the worker had worked 240 days continuously during a period of 12 calendar months prior

to his termination, is on the worker. The last decision of the Hon'ble Supreme Court is a 3-Judge Bench decision. It is further observed in this decision that in order to discharge the burden of the worker he will have practically no documents in his possession. Therefore he will have to do it only by mounting the box and stating his case and also calling for records from the management. If the management is not producing the records called for or not offering satisfactory explanation for non-production, then the court will be free to draw an inference in favour of the worker. However in the reported case it was observed that a certificate was issued by management showing that the workman had worked from 24-11-1988 to 20-6-1994, that the workman had summoned muster rolls for this period from the management, that the management had produced only a few of the muster rolls and that the workman had stepped into the witness box and had stated his case. In the above circumstances the Hon'ble Supreme Court found that the worker had discharged his burden and hence management was directed to reinstate the worker.

6. Coming to the present case, no doubt the worker was examined as WW 1 and he has stated his case. He also produced Ext. M 1, a notary attested copy of work experience issued by the management. That document shows that the worker had worked for 310 days from September, 1996 to October, 1997. The certificate is seen issued on 22-10-1997. However the management strongly disputes the genuineness of the document. They contend that this is a forged document and was not issued by the department. However, when MW1, management witness was in the box he had admitted that the signature in Ext. W1 certificate and name written beneath the signature are his signature and his handwriting. It also contains the designation seal of the officer. Besides, a seal of the office with date is also affixed. The certificate was attested as true copy by a notary on 11-11-1999. According to the worker before he was re-engaged on 3-1-2000 the management got back the original experience certificate from him on the guise that it was necessary for his reengagement. It was never returned despite his repeated requests. He is having only a notary attested copy. The management seriously disputes the notary attested copy and denies to have either issued an experience certificate or got it back for the purpose of reengaging the worker. It is contended by the learned counsel for the management that though the signature in Ext. W1 is that of MW1 it is done by forging the signature by utilizing some other signed document of the officer. The real truth would come to light if the original is produced. It is relevant to note that though the worker has a case that the original was returned to the department for the purpose of re-engagement, the original is not called for from the management. Since the management is seriously disputing the genuineness of the document it was necessary for the worker to summon the document from the management. That is not done by the worker and it is a serious lapse on his part. It is relevant to note that an industrial dispute was raised by the worker before the Assistant Labour

Commissioner (Central) on 22-12-1999 by Ext. W4 petition. There it is mentioned that the worker was given an experience certificate from the management for having engaged him up to October, 1997. He had not produced the original certificate before ALC(C) along with Ext. W4 petition. The management received a notice from ALC(C) in the industrial dispute in April, 2000. They submitted Ext. W5 reply on 3-5-2000. In the rejoinder filed by the worker to the reply statement of management in paragraph 3 it is mentioned that a true copy of the experience certificate was already produced and marked as Annexure-A-I. In paragraph 4 of the rejoinder it is stated that the original certificate was taken back by the department immediately prior to his re-engagement on 3-1-2000. In spite of repeated requests the same was not returned to the worker. Ext. W6 is the rejoinder. It is after raising the industrial dispute before the Labour Commissioner that the original certificate, if true, was returned to the department. By that time the worker had legal advice and legal assistance. It is difficult to believe that even after that he had returned the valuable experience certificate to the department without getting acknowledgement from the department. At the same time, he was vigilant enough to get a copy of the certificate attested by a notary. In the circumstances, the reluctance on the part of worker to call for the original certificate from the department assumes importance. The worker has not produced any other record to show that he was paid for 310 days' work or for lesser period. He has not summoned account books or registers from the management to prove his case that he had really worked for 240 days continuously prior to his termination. Therefore, on the basis of a copy of an experience certificate which is seriously challenged by the management, it cannot be concluded that the claimant had worked for 240 days continuously during a period of 12 calendar months prior to his termination. The worker has not discharged his burden by calling for records from the management as well as the original experience certificate said to be in the possession of the management.

7. Though it was submitted by the management that there was a ban from 1988 to March, 1998 regarding recruitment or engagement of casual labourers, it is submitted by the learned counsel for the worker that as per order in O. A. 1317/99 of Central Administrative Tribunal, Ernakulam Bench that all such or similar orders of ban of recruitment can take effect only on publication in a suitable manner by making it known to all concerned. Since it was not done in the case of ban of 22.8.1988 it was not in force. Whether there is a ban or not will be inconsequential if there is evidence to show that the management had really engaged the worker for a continuous period of 240 days. The concerned officer of the management may be answerable to the department for violating the ban. But, so far as the worker is concerned, he will not lose his right, if any, under the provisions of I.D. Act. However in this case, as already mentioned, there is no evidence to prove that the worker had worked 240 days continuously during a

period of 12 calendar months prior to his termination. Therefore he has not acquired any right under the provisions of I.D. Act to claim re-engagement or reinstatement or notice of termination or compensation. The point is answered accordingly.

8. In the result, an award is passed finding that the action of the management in terminating the service of Shri T.P. Maniyan from service in February 1998 is legal and just and he is not entitled for reinstatement or compensation. The parties will suffer their respective costs. The award will take effect one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 12th day of March, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Workman :

WW1- T. P. Maniyan

Witness for the Management :

MW1- C. M. Purushothaman.

Exhibits for the Workman :

- W1- Notary attested copy of experience certificate dated 22-10-1997.
- W2- Photostat copy of representation dated 4-10-1999 submitted by the workman.
- W3- Postal A1/D card.
- W4- Petition filed by the workman before ALC(C) dated 22-12-1999.
- W5- Reply filed by the management before ALC(C) dated 3-5-2000.
- W6- Rejoinder filed by the workman before ALC(C) dated 24-7-2000.

Exhibits for the Management :

- M1- Photostat copy of O.M. dated 25-3-1998 issued by the Department of Telecommunications along with endorsement.
- M2- Photostat copy of O.M. dated 3-11-1999 issued by the Department of Telecommunications along with endorsement.

नई दिल्ली, 30 मार्च, 2007

का.आ. 1112.-ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गोरखपुर क्षेत्रीय ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 49/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/311/2001-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1112.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 49/2003) of the Central Government Industrial Tribunal/ Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Gorakhpur Kshetriya Gramin Bank and their workmen, which was received by the Central Government on 29-3-2007.

[No. L-12012/311/2001-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT:

SHRIKANT SHUKLA, Presiding Officer

I. D. No. 49/2003

Ref. No. L-12012/311/2001-IR (B-I) Dt. 9-4-2003

Between

The President

Gorakhpur Kshetriya Gramin Bank,
Karmchari Sangh, C/o Yojna Anubhag,
H.O. Gorakhpur Kshetriya Gramin Bank,
Mohaddipur, Gorakhpur-273001

AND

The Chairman

Gorakhpur Kshetriya Gramin Bank
Head Office, Mohaddipur,
Gorakhpur-273001

AWARD

The Government of India, Ministry of Labour, New Delhi referred the following dispute *vide* No. L-12012/311/2002-IR(B-I) dated 9-4-2003 for adjudication to the Presiding Officer, CGIT-cum-Labour Court, Lucknow:

"Whether the action of the Management of Gorakhpur Kshetriya Gramin Bank (i) in not revising the pay of Sri Ajay Kumar Vidyarthi w. f. e. 1-11-92 on the line of 6th Bipartite Settlement of Banking Industry and (ii) also in not paying him the Subsistence Allowance at the rate of full pay as per the amendment clause 45(2) (ii)(b) of the Service Rule, 2001 of the Bank, is legal and justified? If not what relief he entitled for?"

The President, Gorakhpur Kshetriya Gramin Bank Karmchari Sangh is the opposite party in this case but Organising Secretary of Gorakhpur Kshetriya Gramin Bank Karmchari Sangh has filed the statement of claim alleging therein that the worker Sri Ajay Kumar Vidyarthi while posted at Dudhai Branch was suspended on 12-5-94 for committing irregularities. It is also submitted that Sri Vidyarthi was charge-sheeted *vide* charge-sheet dt. 4-7-97. The departmental proceedings were started on 4-3-99 and close

on 28-6-2000. During this period 6th wage settlement was enforced w.e.f. 1-11-92. The worker was not given the benefit of 6th wage settlement w.e.f. 1-11-92. It is also submitted that according to the rules worker is entitled to full pay after a year if the departmental enquiry remains pending for over a year without any fault of the worker. The worker accordingly represented for revised pay as per 6th & 7th revised pay settlement but the bank did not reply. Thereafter worker preferred a writ in the Hon'ble High Court, Allahabad in which he demanded the disposal of his representation. Hon'ble High Court passed a order for disposal of the representation of Sri Vidyarthi. In the order of disposal the Chairman denied the payment of full salary which is contrary to the revised rules. The worker again represented for payment of full salary and for taking him back in the service. Ultimately the worker approached the Asstt. Labour Commissioner. Sri Rajiv Agrawal the person filing the claim statement has prayed for payment of full salary, increments etc. to the tune of 4,13,239.23 alongwith 12% interest and cost of the litigation to the tune of Rs. ten thousand.

The management of the bank has filed written statement denying the claim of the worker. The management of the worker has admitted that the worker was suspended on 12-5-94. It is further submitted that the worker did not reply the charge-sheet even after affording various opportunities. It is admitted that the departmental proceedings started on 4-3-99. It is submitted that the worker absented himself on 19 sittings of the departmental enquiry out of 47 sittings. It is also submitted that due to non-cooperation of Sri Vidyarthi the enquiry officer closed the departmental enquiry proceedings. However, the enquiry as per the principle of natural justice allowed Sri Ajay Kumar Vidyarthi to present his brief. Sri Vidyarthi, however submitted his brief on 9-2-2001. After perusing the enquiry report the Disciplinary Authority looking to the seriousness of misconduct inflicted a fine of Rs. 50/- and passed the order of withholding 4 annual increments with cumulative effect. The disciplinary authority also gave 15 days time to file his representation, but the worker did not submit his representation. It is further submitted that the worker was given various opportunities for moving the representation. It is also submitted that according to the orders of the Government of India dt. 17-4-02 revised salary and D.A. was to be fixed and paid w.e.f. 1-2-92 and 1-11-97 according to 6th & 7th wage settlement. But since Sri Vidyarthi was under suspension therefore he was not entitled to any such benefit. Referring to the service regulation quoted by the trade union in para 3 it has been submitted that the same are applicable w.e.f. 30-8-01. It is further submitted that since Sri Vidyarthi was suspended prior to service regulation came into force therefore the service regulation referred by him is irrelevant. It has further been submitted that the worker has been paid subsistence allowance as per the banking employees service Regulation 1980. The filing of the writ by the worker in Hon'ble High Court judicature at

Allahabad is admitted and it is also admitted that complying the order the representation has been disposed of by the speaking order of the Chairman. It has therefore stated by the management of the bank whatever has been paid to the worker is proper and legal. The management of the bank prayed that worker is not entitled to any benefits.

It is noteworthy to mention here that on 28-8-04 the President of the trade union Sri Rajive Ranjan Tripathi moved an application for taking his statement of claim on record i.e. paper A1-13 alongwith affidavit C-12 and the same was allowed at cost of Rs. 300. The revised statement of claim contained the same allegations.

Following dates were fixed for evidence. 12-4-2005, 21-7-05, but when the parties abstained in participating in the proceeding then it was believed that parties do not wish to produce oral evidence in the matter therefore 3-10-05 was fixed for argument. On 3-10-05 also the worker or the trade union abstained and the management of the bank moved an application D-25 stating that Central Government has issued Gazette notification dt. 12-9-2005 for amalgamation of Gorakhpur Kshetriya Gramin Bank and Basti Gramin Bank into single regional rural bank. It was also stated that amalgamated Bank shall be called as Purvanchal Kshetriya Gramin bank with its head office at Gorakhpur. In the circumstances the adjournment was sought which was allowed and 30-11-05 was fixed for argument.

On 30-11-05 Rajiv Agrawal appeared for trade union and none appeared for the opposite party therefore 2-3-06 fixed for argument. On 2-3-06 the opposite party sought adjournment vide application D-26 and therefore next date fixed which was 20-4-06. On 20-4-06 the trade union representative moved an application alongwith affidavit A-28 for recalling the order dt. 21-7-05. On 24-7-06 the said application was disposed of by providing an opportunity for evidence and 19-9-06 was fixed for evidence.

Trade union absented on 19-9-06 and subsequent date 22-9-06 and therefore the court ordered to proceed ex-party against the trade union and fixed 9-10-06 for ex-party evidence.

On 9-10-06 none appeared for the trade union and application of Sri Ajay Kumar Vidyarathi was received through post for providing him the next date. Since the case was proceeded ex-party against the trade union, the court was not obliged to entertain the correspondence with the worker directly by post however, in the interest of justice the worker and trade union were informed by registered post that next date fixed is 1-12-06. However, the notice returned unserved.

On 1-12-06 worker presented himself and opposite party was also present and Sri Ajay Kumar Vidyarathi was moved an adjournment application D-34 alongwith authority letter of Sri V. P. Pandey C-35 and therefore next date fixed was 22-12-06, subsequently the next date was fixed dt. 17-1-07 but the trade union representative did not turn up nor the worker, therefore 6-3-07 was fixed for hearing.

On 6-3-07 none appeared for trade union and the worker and therefore court ordered to proceed ex-party against the trade union and 12-3-07 was fixed for opposite party's evidence. However, after passing of the order a application was received by post on 6-3-07 purported to be under the signature of Sri Ajay Kumar Vidyarathi stating that he was sick on 6-3-2007.

On 12-3-07 the case was taken up. The worker did not appear and again a application received through post i.e. D-39 that his wife is sick and doctor has asked for bed rest for two weeks and there is no other person to look after his wife. The application is dt. 9-3-07.

Even today the worker has not turned up after repeated calls. The representative of the opposite party has filed affidavit A-40 of Sri S.C. Saxena, General Manager stating that Sri Ajay Kumar Vidyarathi was present on 6-3-07 and 12-3-07 in the office of the bank. He has also filed C-41 the letter of Branch Manager and the photo copy of the attendance register for the month of March 2007. It shows clearly that Sri Vidyarathi attended the office on 6-3-07 and 12-3-07 on the date fixed in the court. The representative of the opposite party objected the application of the worker Sri Vidyarathi that he is sending false application by the post with incorrect facts. Sri Nischal Jagdhari stated that the worker is attending office but is not appearing in the court therefore these fictitious application to circumvent the proceeding of the court. Sri Nischal Jagdhari has also argued that it is trade union which is party before this court and not the worker. In the circumstances the application dt. 5-3-07 and application dt. 9-3-07 respectively paper no. D-38 and 39 are rejected.

It is pertinent to mention here that trade union has not produced the worker to substantiate the claim allegations. Opposite party has also not produced any evidence.

Heard the representative of the management alone as none is present for the trade union. The representative of the opposite party has argued that departmental proceeding were prolonged due to the carelessness on the part of the worker and therefore he is not entitled to any relief. It is also argued that service regulation which is referred by the trade union is not from retrospective effect instead it was effective w.e.f. 30-8-01 whereas the worker was suspend w.e.f. 12-5-94. It is also argued that at the time worker remained suspend the service regulation 1980 were ineffective. It was for the trade union to prove that that worker was entitled to revision of pay as per 6th and 7th Bipartite settlement and he has failed to prove it therefore the issue be answered against the trade union.

I agree that the arguments of Sri Nischal Jagadhari the issue is answered against the trade union as well as the worker and the worker is not entitled to any relief. Award passed accordingly.

Lucknow

21-3-2007 SHRIKANT SHUKLA, Presiding Officer

opportunity to put forward his case and defend the charges. Ext. M1, Enquiry File, containing the enquiry report and the proceedings show that the workman was assisted by a defence representative. He was supplied with copies of documents and list of witnesses of the management. The workman had cross-examined the witnesses on the side of the management. He was given opportunity to adduce evidence. However nobody was examined on the side of the defence, but only two documents were marked as DE 1 & 2. On the side of the management Exts. ME 1 to 22 documents were marked in the enquiry. Though MW1, the complainant was cited, he was not examined as he did not turn up on an adjourned date for examination and later he was not willing to give evidence. The defence had sought adjournments and all those requests were granted by the Enquiry Officer except that of 17-11-1999. But even on that day the workman was present though the Defence Representative was absent. When the enquiry officer decided to proceed with the enquiry the workman went away. However on the next day the witness, MW 2, who was examined on 17-11-1999, was cross-examined. Thus, every opportunity was given to the workman to defend the charges. There was no occasion which caused any prejudice to the workman by the conduct of the enquiry officer. Therefore I find that a fair and proper enquiry was conducted by the Enquiry Officer.

6. Point No. (2) :

Shri K. Balaraman was a clerk of Visakhapatnam Branch of Federal Bank. On the allegation that he had demanded Rs.20,000 from Advocate S.V. Ramana who had applied for a house loan from that branch in 1998, he was suspended from service and it was followed by a domestic enquiry and later punishment of dismissal from service. MW 2 was the Senior Manager of Visakhapatnam branch at the relevant time. MW 3 was Manager (Admn.) of that branch. Both of them have given evidence before the Enquiry Officer that the workman had demanded bribe from Advocate S.V. Ramana for disbursement of a house loan. The applicant, Adv. Ramana had complained to MW 2, the Manager about the demand of the workman and submitted a complaint letter to the Manager and it is Ext. ME 6. On 10-3-1999 the Manager called the workman to Manager's cabin at 5.00 p.m. At that time MW 3, Manager (Admn.) was also there in the cabin. The workman was questioned about the complaint of Adv. Ramana. The workman admitted that he had sought commission of 10% of loan amount and he was prepared to face any consequence. Ext. ME 7 is a letter sent to Advocate S.V. Ramana by the workman demanding commission. The Manager, MW 2, on the basis of his preliminary enquiry, sent a report to DGM (P&IR) Department, Head Office. Thereafter a domestic enquiry was conducted. Though MW 2 and 3 were cross-examined nothing was brought out to discredit them. MW1 is Advocate S.V. Ramana. But he was not examined. However the enquiry proceedings and the report show that he was present for the purpose of giving evidence in the enquiry on 8-10-1999. But the defence representative raised several preliminary objection

regarding enquiry and its proceedings and took the whole day for raising objections. MW1 (Adv. Ramana) therefore had to wait from morning till evening. The enquiry was adjourned to the next day. But the defence sought adjournment on the ground of illness of defence representative. Hence the enquiry was adjourned to 16-11-1999. That day also defence sought adjournment to 17-11-1999. On 17-11-1999 though workman was present he sought adjournment again. But the request was turned down by the Enquiry Officer. Then the workman without participating in the enquiry left the place. However on 17-11-1999 Advocate S. V. Ramana was not present. The management then contacted him. He said that he was pressurised by the workman and persons known to him to withdraw the complaint as the workman's service was at stake and his family was in difficulty. Hence he made a request to withdraw the complaint. MW 2 has given evidence to this effect. This was the reason why MW 1, Adv. Ramana was not examined though he was the complainant. But his complaint, Ext. ME 6 is marked through MW 2. Ext. ME 1 is letter dated 16-11-1999 of Adv. S.V. Ramana to the Senior Manager, MW 2 requesting to treat his complaint as withdrawn. That itself proves the fact that a complaint letter, Ext. ME 6 was given to the Manager by Adv. Ramana. He was also present to give evidence on two occasions. But the defence sought adjournment and got the enquiry delayed. Meanwhile the complainant was won over by the defence. The complainant had opened an S.B. account by submitting Ext. ME 1 account opening form duly filled and given to bank. For the purpose of a house loan he had submitted title deeds of properties to the bank and the Manager had forwarded the title deeds to bank's lawyer for legal opinion by Ext. ME 3 forwarding letter. However the loan was not availed and it was not sanctioned as legal opinion was awaited due to non-production of encumbrance certificate and tax receipts. As against the oral and documentary evidence on the side of the management there is absolutely no evidence on the side of defence to disprove the charges. It is on the basis of these materials that the Enquiry Officer came to the conclusion that the workman had demanded bribe from Adv. Ramana and the workman was guilty of the charges. There is no reason for this court to interfere with the findings of the Enquiry officer. Point is answered accordingly.

20. Point No. (3) :

Before the punishment was imposed a copy of enquiry report was furnished to the workman and he was heard by the disciplinary authority. Besides the present disciplinary action, on two other occasions there was disciplinary action against the workman. He was charge-sheeted twice for issuing cheques to third parties without keeping sufficient balance in his account. When he was found guilty on the first occasion, the cheque book facility was withdrawn and a penalty of censure was imposed. Thereafter taking a cheque book issued to one Smt. Premaleela, utilized it for issuing cheques to third parties. When the cheques were presented for encashment they

were returned for want of fund in the account of the workman. Disciplinary action was taken and punishment of reduction of basic pay by one stage was imposed. That apart, there was a civil suit against the workman in Munisiff's Court, Thrissur. In pursuant to the decree that Court attached Rs.4492 and another sum of Rs.18,713 from the salary of the workman. The District Court, Pudukkottai issued a notice of attachment of the salary in execution of a decree. Smt. L. Anthonyammal had lodged a complaint on 11-8-1997 with the bank alleging non-payment of Rs.20,000 borrowed from her by the workman. The Thanjavoor Magistrate had issued an arrest warrant on 22-6-1998 in a criminal case against the workman. In the same court another criminal case for offence U/s. 138 of Negotiable Instruments Act was pending. Thus the antecedent of the workman is not clean. Such being the conduct of the employee of the bank the disciplinary authority could not have taken a lenient view in the matter of punishment. The workman continued to be found indulging in similar dishonest activities. Taking all these circumstances into consideration, major penalty of dismissal was imposed. This court is not persuaded to show any leniency in the matter of punishment. The punishment commensurate with the guilt. Hence no interference is called for.

21. In the result, an award is passed finding that the action of the management in dismissing the workman, Shri K. Balaraman from service is legal and justified and he is not entitled for any relief. No cost. The award will take effect one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 20th day of March, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Workman/Union : Nil.

Witness for the Management : Nil.

Exhibits for the Workman/Union : Nil.

Exhibits for the Management :

M1 - Domestic Enquiry File.

नई दिल्ली, 30 मार्च, 2007

का.आ. 1114.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फेडरल बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, इरनाकुलम, कोची के पंचाट (संदर्भ संख्या 284/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/131/97-आई. आर. (बी-1)]

अजय कुमार, डैम्स अधिकारी

New Delhi, the 30th March, 2007

S.O. 1114.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 284/2006) of the Central Government Industrial Tribunal/ Labour Court Ernakulam Kochi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Federal Bank Ltd., and their workman, which was received by the Central Government on 29-3-2007.

[No. L-12012/131/97-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present :

Shri P. L. Norbert, B.A., LL.B., Presiding Officer

(Monday the 19th day of March, 2007/28th, Phalguna, 1928)

I. D. 284/2006

(I.D. 12/98 of Labour Court, Ernakulam)

Workman/Union	:	The General Secretary Federal Bank Employees Union Central Office, P.B. No.10 Alwaye. Adv. Shri Anil Kumar.
Management	:	The Chairman Federal Bank Limited Head Office Alwaye. Adv. M/s. B. S. Krishnan Associates.

AWARD

This is a reference made by Central Government under Section 10(1)(d) of Industrial Disputes Act, 1947 for adjudication. The reference is :

"Whether the action of the management of M/s. Federal Bank Ltd. in dismissing the services of Shri K. Sebastian, Kadakkal Branch w.e.f. 30-8-1995 is justified? If not, to what relief the workman is entitled ?

2. The facts of the case in brief are as follows :

Shri K. Sebastian was a clerk of Federal Bank in Kadakkal Branch. He was charge-sheeted on allegations of commission of various fraudulent transactions and misappropriations during the period 1984-87. A domestic enquiry was conducted and the workman was found guilty of the charges. The Disciplinary Authority imposed a punishment of dismissal on 30-8-1995. Though an appeal was filed, it was rejected by the Appellate Authority. According to the workman he was victimized to cover up the lapses on the part of the management. The enquiry was conducted in violation of principles of

natural justice. The Enquiry Officer was biased. The workman was not given a reasonable opportunity to prove his innocence. The evidence on record was not properly appreciated by the Enquiry Officer. The Disciplinary Authority, without properly assessing the evidence, imposed a major punishment of dismissal which is not proportionate to the gravity of the charges. The Disciplinary Authority did not look into the past clean record of the workman. The Appellate Authority failed to weigh the evidence before confirming the findings of Enquiry Officer and upholding the punishment. Therefore the findings and the punishment are to be set aside. The workman is entitled to be reinstated with consequential benefits.

3. According to the management, two charge-sheets were issued to the workmen for serious acts of misconduct committed by him. The Enquiry Officer conducted enquiry as per rules and fully complying with the principles of natural justice. The workman was assisted by the Joint Secretary of the Union. The workman had fully participated in the enquiry. He cross-examined all the management witnesses. He was given every opportunity to produce his witnesses and adduce defence evidence. It is based on the evidence on record that the Enquiry Officer found the workman guilty of the charges. A copy of the enquiry report was given to the workman. He was heard before punishment was imposed. The workman along with his associates misappropriated customers' money. When customers came to deposit money to their accounts the workman and his associates used to accept money, but would not remit it into the customers' accounts. However, entries were made in their passbooks. When the account holders wanted to withdraw money the workman and his associates would either remit money to their accounts to facilitate passing of cheques without routing through the accounts or pay money from their pockets. For the serious acts of fraudulent transactions the punishment of dismissal was imposed. It is in proportion to the gravity of the charges. It is not a matter of victimization. The workman is not entitled for any relief.

4. In the light of the above contentions of the parties, the following points arise for consideration :

- (1) Whether the enquiry was conducted in a fair and proper manner?
- (2) Are the findings sustainable?
- (3) Is the punishment proportionate?

The evidence consists of Ext. M1 enquiry file alone.

Point No. (1)

5. The workman contends that the enquiry was conducted without following the procedure for enquiry and in violation of the principles of natural justice. He was not given sufficient opportunity to prove his innocence. The Enquiry Officer had a biased attitude and he was favouring the management. The management has denied these allegations of the workman. The enquiry report

contained in Ext. M1 enquiry file (File No.1) beginning from running page 17 reveals that the enquiry officer had not violated the principles of natural justice. On the contrary the employee was given opportunity to defend the charges. The workman was assisted by Joint Secretary of the Union. The workman and the defence representative had participated in the enquiry throughout. All the three management witnesses were cross-examined. Copies of all documents produced by the management were furnished to the workman. On the side of defence, witnesses were examined. There was no occasion which caused any prejudice to the workman during enquiry. Therefore the contention of the workman that there was no fair and proper enquiry is without any basis. Therefore I find that the enquiry was conducted in a fair and proper manner.

Point No. (2)

6. The workman, Shri K. Sebastian, a clerk of Kadakkal Branch of Federal Bank was issued with two sets of charge-sheets on 16-4-1988 & 6-1-1989 by the management. The main allegations are that Shri Sebastian and his associates used to receive money brought by customers for remittance into their accounts, without actually remitting them in the accounts and posting in respective accounts books. However they used to record remittance in passbooks. When the customers approach for withdrawal either the amount would be paid from their pockets or enough amounts would be remitted in the accounts to facilitate passing of cheques or permitting withdrawal. This was going on from 1984 to 1987.

7. On 2-4-1987 when one K. Moosa Kunju, an S.B. account holder came to bank for withdrawing Rs.2000 from his account the Section Clerk, Smt. K. Anita noticed difference in balance in the passbook and in the ledger and the matter was reported to her immediate superior officer, Shri P.P. Varghese, who in turn to the Manager. Since entry in the passbook was made by Shri Sebastian the Manager questioned him. Then the workman took the passbook, entered cashier's cabin, recorded entry of Rs. 2000 in the passbook and disposed of the customer. When the manager further questioned the workman he shifted the responsibility to his associate, Shri Vasavan saying that Rs. 38,000 brought by the customer on 18-3-1987 for remittance, had to be entered in the account books by Shri Vasavan. Thinking that Shri Vasavan would do so, the workman had entered the amount in the passbook of the customer. On 6-4-1987, Shri Vasavan remitted Rs. 36,000 into the customer's account. Thus the fraudulent transactions of Shri Sebastian and his associates were brought to light and further probe revealed more misappropriations.

7. Shri K. Moosa Kunju was having an S.B. Account (No.5027) in Kadakkal Branch. Ext. ME2 is passbook. Ext. ME3 is copy of ledger account. He had brought Rs. 38,000 on 18-3-1987 for remittance in his account. The money was received by Shri Sebastian who was cashier then. No entry was made in the ledger, but entry was made in the passbook. MW2, Branch Manager & MW3, another officer of the bank have deposed that they had verified the cashbook

and other records of the bank and had not found any corresponding entry of remittance in the ledger or other account books. MW1, senior officer of the bank and MW2, Manager of the bank have identified the handwriting in the passbook as that of the workman, Shri Sebastian. However, DW2, Moosa Kunju who was examined on the side of the defence had a different version that money was entrusted to Manager for remittance along with passbook. The manager in turn gave it to a staff sitting nearby. However that staff was not Shri Sebastian. But when he was cross-examined he admitted that he could not have seen the staff to whom money and passbook were entrusted by the Manager, while sitting in the cabin of the Manager. For this reason the enquiry officer did not accept the version of DW2, Moosa Kunju. Ext. ME53 (in Ext. M1) is a statement given by the workman to the Vigilance Officer wherein he had admitted that he had made entry in the passbook of the customer regarding remittance of Rs. 38,000. On 2-4-1987 the customer came for withdrawing Rs. 2000. Then also the workman made entry in the passbook in his handwriting, but no corresponding entry was made in the ledger. MW1 has identified the handwriting of the workman in the passbook. MW2 has also identified the handwriting of Shri Sebastian in the passbook. On 6-4-1987 the same customer brought Rs. 36,000 for remittance in his account. Ext. ME5 is the S.B. pay-in-slip. In Ext. ME53 statement of Shri Sebastian to Vigilance Officer he says that the amount was remitted by Shri Vasavan and not by him. The pay-in-slip was not signed by the customer. The signature in pay-in-slip, Ext. MFS and the signature in the account opening form submitted by the customer at the time of starting the account, Ext. MF6, differ. The finding of the Enquiry Officer that Shri Sebastian and Vasavan had colluded in the above transaction and misappropriated money is based on the evidence discussed above.

8 Smt. Sesilamma and Shri Rajan had a joint S.B. A/c No. 5600. They brought Rs. 38,310 for remittance into their account on 3-9-1985. The bankman, Shri Vasavan received the amount and entered the amount in the passbook of the customers. But there was no corresponding entry in the ledger. Ext. ME8 is the passbook. Ext. ME9 is the ledger folio. On the same day, a cheque for Rs. 20,000 was presented by the customers and it was paid by Shri Vasavan and his associates. These transactions were not recorded in the ledger, but entered in the passbook and they were not routed through the account. On 4-9-1985 a cheque for Rs. 12,500 was presented for payment and this was routed through the account. The credit and debit entries in the ledger were made by Shri Sebastian, the workman. The withdrawal of Rs. 12,500 on 4-9-1985 was entered in the ledger by Shri Sebastian. On 25-9-1985 when a cheque for Rs. 15,000 was presented by the customer Shri Sebastian paid it without routing through the account, but entering the transaction in the passbook. Thus, Shri Sebastian colluded with Shri Vasavan and two other officers of the bank in misappropriating the amounts in the account of Smt. Sesilamma and Shri Rajan. MW1 has identified the

handwriting of Shri Sebastian as well as Shri Vasavan.

9 Shri Jahafar Rawthar was having an S.B. A/c No. 3481. On various dates remittances were made by the customer. Fourteen remittances were thus made by the customer during the period from 30-4-1984 to 25-2-1985. These remittances were manipulated and misappropriated by Shri Sebastian and his associates. On 4-6-1984 Shri Sebastian had remitted into customer's account Rs. 8,000 and on 5-2-1985 Rs. 15,000. These remittances were made to compensate the previous misappropriations. The pay-in-slips prepared for remittance of the above amounts were written by Shri Sebastian. They were not signed by the customer. The remittances were posted in the ledger by Shri Sebastian. But there was no corresponding entry in the passbook. MW1 identified the handwriting of Shri Sebastian in Ext. ME16 and 17 pay-in-slip and Ext. ME15 ledger.

10. Shri K. Vasudevan was having an S. B. A/c No. 4905. He had remitted Rs. 9,000 on 4-3-1987. Though the amount was entered in the passbook it was not posted in the ledger. The passbook was written by Shri Vasavan, the bankman and the pay-in-slip was written by Shri Sebastian. Ext. ME25 is the passbook, ME26 is the copy of ledger and ME27 is the pay-in-slip. Ext. ME54 is copy of complaint given by Vasudevan to the Vigilance Officer of the bank. The complaint says that the amount was entrusted to Shri Vasavan, bankman for remittance. The evidence shows that Shri Sebastian and Vasavan colluded together in misappropriating the amount of the customer, Shri Vasudevan.

11. Shri M. Soman Pillai was having S. B. A/c. No. 2183. Ext. ME28 is the passbook and ME29 is the ledger copy. In the passbook credit entries for Rs. 20,000, Rs. 22,000 and Rs. 5,750 are seen recorded on 23-10-1985, 19-5-1986 & 16-10-1986 respectively. There are no corresponding entries in ledger. According to MW1 these entries were made by Shri Vasavan, the bankman. Another credit entry of Rs. 5000 is seen posted in the ledger on 25-8-1986 without corresponding entry in the passbook. It was done by Shri Vasavan. Debit entries are seen in passbook on different dates in respect of different amounts without corresponding entries in the ledger. According to MW1 the debit entry made on 18-12-1986 in the passbook, is in the handwriting of Shri Sebastian and the rest in the handwriting of Shri Vasavan. Thus both of them along with their associates colluded for misappropriating the money in the account. Besides, on 15-7-1986 and 10-12-1986 two debit entries for Rs. 1300 and Rs. 500 respectively are seen recorded in the passbook. No correspondent entries are there in the ledger. These entries were made in the passbook by Shri Sebastian according to MW1. Ext. ME32 is the withdrawal slip dated 19-12-1986 for Rs. 3340. This amount was withdrawn as per withdrawal slip. The withdrawal slip was prepared by Shri Sebastian. Necessary entry was made in the ledger by Shri Sebastian. There is no corresponding entry in the passbook. On 18-12-1986 Rs. 25,800 was shown as withdrawn in the

passbook without recording the same in the ledger. MWI identified the handwriting in the passbook as that of Sebastian. When the customer came to withdraw Rs. 25,800 since there was not enough balance in the account due to misappropriation, Shri Sebastian got the withdrawal form signed by the customer for Rs. 3340 and that amount alone was withdrawn from the account and the balance amount to make up Rs. 25,800 was taken from his pocket and paid to the customer. Ext. ME 55 is a statement given by account holder, M. Soman Pillai to the Vigilance Officer.

12. Due to misappropriation of money the balance amount in the account used to be lower than the actual. While calculating the interest and posting interest in the passbook Shri Sebastian and his associates used to show higher amount of interest than in accordance with the balance in the account, in order to avoid notice of customers about the discrepancies in the account. On 30-6-1986 and 20-12-1986 the actual interest that could accrue for the amount in the account of Shri M. Soman Pillai was Rupee 1 and paise 20 and Rs. 15 paise 50 respectively. But that being a low amount of interest which would have aroused suspicion in the mind of the customer, Shri Sebastian showed a higher amount of interest on 20-12-1986 as Rs. 530 paise 60. MWI identified the handwriting in the passbook as that of Shri Sebastian.

13. The account holder of S. B. A/c No. 8033 is Gopala Pillai. Shri Sebastian remitted Rs. 5000 on 25-4-1987 into that account. This was done to compensate the misappropriation committed by him and his associates in the account earlier. The remittance slip was prepared by Shri Sebastian according to MWI. Ext. ME 33 is the passbook and ME 34 is the ledger copy. Ext. ME 37 is the pay-in-slip. On 25-4-1987 Rs. 5000 was shown in the ledger as remitted by the customer. The pay-in-slip was written by Shri Sebastian, though the ledger entry was made by Smt. Anita. Ext. ME 37 is the pay-in-slip and MWI identified the handwriting as that of Sebastian. The remittance was made by Shri Sebastian to compensate previous misappropriation from the account of the customer.

14. Shri Rajappan Pillai had S.B. A/c No. 10012. His passbook is Ext. ME 39 and ledger folio is Ext. ME 40. On 14-4-1987 Shri Sebastian had remitted Rs. 3675 into the account. Ext. ME 42 is the pay-in-slip. This was prepared by Shri Sebastian. However the passbook, Ext. ME 39, was not genuine as its account number on the outer cover differed from inner pages and the number was tampered by someone. This amount was remitted by Shri Sebastian when the customer came to withdraw Rs. 4000 from the account. On 25-9-1986 a credit entry of Rs. 275 was made in the passbook by Shri Vasavan and initialed by Shri K. Sebastian. Rs. 500 was remitted into the account on 6-5-1985. The pay-in-slip was prepared by Shri Sebastian and another staff.

15. S.B. Account No. 4275 is that of Mr. Meera Sahib. Rs. 10,000 each was brought for remittance by the customer on 2-9-1986 and 10-9-1986. Shri Sebastian accepted the money, entered them in the passbook, but did not remit

into the account. The customer presented a cheque for Rs. 20,000 on 26-9-1986, but the balance was only Rs. 165 paise 15. Shri Sebastian arranged money without routing the cheque through the account. This was again a fraudulent transaction. Ext. ME 44 is the passbook and ME 45 is the ledger folio.

16. As per the 2nd set of charges, a cheque for Rs. 5000 was drawn in the account of Shri Ashraf, account holder of NRE S.B. A/c No. 1545, in favour of one M.M. Rashid. The cheque was presented through S.B.A/c No. 5038 of M. M. Rashid on 24-3-1987. Shri Sebastian accepted the cheque and made credit entry in the passbook of Shri Rashid. But no corresponding entry was made in the ledger. The money was misappropriated by Shri Sebastian. A cheque for Rs. 4000 was presented on 26-3-1987 and another cheque for Rs. 1000 on 2-4-1987 for encashment. There was not enough balance. Hence Shri Sebastian managed to effect payment without routing through the account. Debit entries were made in the passbook without corresponding entries in the ledger. Ext. ME 46 is the passbook of Shri Rashid. Ext. ME 47 is the ledger copy. Ext. 48 is the cheque for Rs. 5000 drawn by Ashraf.

17. On 8-1-0-1986, account holder, Shri P. Mohammed Kunj brought Rs. 5500 for remittance in S.B. A/c No. 3168. Shri Sebastian accepted the money, made entry in the passbook, but did not remit the money into the account and misappropriated it. In order to cover up his misdeed, while crediting interest, higher amount of interest than the actual was shown in the passbook. Another sum of Rs. 10,000 was brought by the customer on 1-4-1987 for remittance. Shri Sebastian made entry in the passbook, but no corresponding entry was made in the ledger. To compensate these misappropriations Shri Sebastian remitted Rs. 15,550 into the account on 14-4-1987. But no corresponding entry was made in the passbook. The handwriting of the workman is identified by MW 1.

18. Ext. ME 56 is a letter submitted by Shri K. Mohan Nair, former Manager of Kadakkal branch on 12-5-1987 to DGM (Inspection), Head Office of the Federal Bank. He admitted that with his knowledge certain adjustments were made in customers' accounts in respect of remittances and withdrawals. He has named the officials involved in the transactions. One of them is Shri K. Sebastian, the workman.

19. Thus the Enquiry Officer has elaborately considered the documentary evidence and made meticulous analysis of the evidence. I find no lapses in the appreciation of evidence by the Enquiry Officer. No inroads are made by the workman to find that the enquiry officer has gone wrong in drawing the conclusion against the workman regarding the fraudulent transactions and misappropriations. Hence I find that the Enquiry Officer has rightly held the workman guilty of the charges levelled against him.

20. Point No. (3) :

The punishment imposed is dismissal. It is needless to say that the allegations against the workman are serious

in nature. It is not one or two instances, but many. No bank can tolerate persons who are untrustworthy in a banking institution. The penalty imposed definitely commensurate with the gravity of the offence. Unless the punishment is shockingly disproportionate no interference is called for. There can be no doubt that deterrent punishment is warranted in a case of this nature and hence the workman does not deserve any leniency in the matter of punishment.

21. In the result, an award is passed finding that the action of the management in dismissing the workman from service is legal and justified and he is not entitled for any relief. No cost. The award will take effect one month after its publication in the official Gazette.

[Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 19th day of March, 2007]

P. L. NORBERT, Presiding Officer
APPENDIX

Witness for the Workman/Union: Nil.

Witness for the Management: Nil.

Exhibits for the Workman/Union: Nil.

Exhibits for the Management:

MI—Domestic Enquiry File.

नई दिल्ली, 30 मार्च, 2007

का.आ. 1115.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फेडरल बैंक लि. के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, इरनाकुलम, कोची के पंचाट (संदर्भ संख्या 285/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/130/97-आई.आर.(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1115.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 285/2006) of the Central Government Industrial Tribunal/Labour Court, Ernakulam Kochi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Federal Bank Ltd. and their workmen, which was received by the Central Government on 29-3-2007.

[No. L-12012/130/97-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT

Shri P. L. Norbert, B.A., LL.B., Presiding Officer

(Friday the 16th day of March, 2007/25th Phalgun, 1928)

I. D. 285/2006

(I. D. 14/98 of Labour Court, Ernakulam)

Workman/Union : The General Secretary, Federal Bank Employees Union, Central Office, P. B. No. 10, Alwaye.

Adv. Shri Anil Kumar

Management : The Chairman, Federal Bank Limited, Head Office Alwaye.

Adv. M/s. B. S. Krishnan Associates.

AWARD

This is a reference made by Central Government under Section 10 (1) (d) of Industrial Disputes Act, 1947 for adjudication. The reference is :—

"Whether the action of The management of M/s. Federal Bank Ltd. in dismissing the services of Shri Vasavan, Kadakkal Branch w.e.f. 30-8-1995 is justified ? If not, to what relief the workman is entitled?"

2. The fact of the case in brief are as follows :—

Shri P. Vasavan was a bankman of Federal Bank in Kadakkal Branch. On the allegations of committal of various fraudulent transaction and misappropriation of money during the period 1984-87 he was suspended from service w.e.f. 2-11-1987. He was charge-sheeted on 14-4-1988 and a domestic enquiry was conducted. He was found guilty of all the charges and the Disciplinary Authority dismissed him from service w.e.f. 30-8-1995. Though an appeal was filed, the Appellate Authority confirmed the findings of the Enquiry Officer and punishment imposed by the Disciplinary Authority. According to the workman the enquiry was not conducted in a fair and proper manner. The principles of natural justice were not followed by the Enquiry Officer. A partisan attitude was adopted by the Enquiry Officer. The evidence was not properly appreciated by the Enquiry Officer. The Disciplinary Authority has not properly assessed the evidence on record and analysed the report of the Enquiry Officer before deciding the punishment. At any rate the punishment is shockingly disproportionate to the charges. The Disciplinary Authority did not take into consideration the unblemished past records of the workman.

3. The management on the other hand, contends that the allegation against the workman was serious in nature. He was charge-sheeted for commission of fraud, cheating and acting against the interest of the bank. Large amounts were misappropriated by the workman and his associates. The amounts brought by customers for deposit were siphoned off by the workman and were not remitted and posted in the account books of the bank. Later some amounts were remitted without the knowledge of customers. The amounts misappropriated are large. The

enquiry was conducted in a fair and proper manner, following the principles of natural justice and procedure prescribed by the bank. The workman was given fair opportunity to participate in the enquiry, cross-examine witnesses and adduce defence evidence. It is on the basis of the evidence recorded in enquiry that the Enquiry Officer came to the conclusion that charges stood proved. It is on the basis of the findings that the Disciplinary Authority imposed punishment of dismissal which commensurate with gravity of charges. In the circumstances no interference is called for.

4. In the light of the contentions of the parties, the following points arise for consideration :

- (1) Whether the enquiry was conducted in a fair and proper manner ?
- (2) Are the findings sustainable ?
- (3) Is the punishment proportionate ?

The evidence consists of Ext. M1 enquiry file alone.

5. Point No. (1) :

Though there is a contention in the claim statement that no proper and fair enquiry was conducted, that the enquiry officer was biased and workman was not given sufficient opportunity to put forward his case, it is seen from the enquiry report that the workman was defended by a defence representative, Secretary of Federal Bank Employees Union. On the side of management 3 witnesses were examined and 45 documents were marked. All the three witnesses were cross-examined by the defence. Copies of all documents on the side of management were given to the workman. On the side of defence two witnesses were examined. But no documents were produced. Throughout the enquiry the workman and his representative were present and participated effectively in the enquiry. I am not able to find any occasion during the enquiry which caused any prejudice to the workman. Moreover at the time of argument this aspect was not seriously pursued, naturally so, as there is noting on record to bring home the contention of the workman regarding validity of enquiry. Therefore, I find that the enquiry was conducted in a fair and proper manner following the procedure of enquiry and principles of natural justice.

6. Point No. (2) :

A number of charges were levelled against the workman mainly for cheating the customers and bank and misappropriating money. The *modus operandi* of the workman and his associates was that when customers approached the bank for remitting money into their accounts the former used to receive money pretending to help customers and make entries in their pass books. However no entry was made in the account books of the bank and money was misappropriated by the workman and his associates. On certain occasions they used to remit certain amounts in accounts in respect of which fraud was

committed in order to cover up their misdeeds and to avoid notice by customers of the shortage of balance amount in their accounts. As per the charge-sheet, 17 such instances were pointed out and the amount involved in those fraudulent transaction comes to Rs. 2,18,870.

7. The first instance of misappropriation was in respect of Rs. 9,000 brought by a customer to remit in the account on 4-3-1987. Through the amount was recorded in the Pass book of the customer it was not posted in the ledger of the bank. Ext. ME 18 (of Ext. M1) is Pass book of S. B. A/c. No. 4905 of K. Vasudevan. Ext. ME 19 is copy of ledger of the said account. Ext. M 41 is a complaint of customer, Vasudevan to the Vigilance Officer of the bank. MW1 is an officer of the bank who was working in S.B. Section of Kadakkal branch for some time. He has identified the handwriting of the workman in the Pass Book. He also speaks to the effect that there is no corresponding entry in Ext. ME 19 ledger of the said account. Ext. ME 41 complaint said to have been given by account holder Vasudevan to Vigilance Officer is denied by him whom when he was in the box as witness on the side of workman. But the Enquiry Officer has explained the circumstances why the witness had given such a version. He was examined as DW1 in Ext. M1 enquiry. He had also denied that Ext. ME 18 passbook was not his and the original passbook was with him. However he did not produce the passbook said to be with him. According to the management, Ext. ME 18 is the Passbook. He had opened his account in Kadakkal branch of the bank in 1981 and he was introduced by the workman then. The Enquiry Officer assessing the circumstances came to the conclusion that the customer, Vasudevan was siding with the workman due to his longstanding relationship.

8. The next incident of misappropriation is with regard to remittance of Rs. 47,750 on various dates by customer, M. Soaman Pillai in his S. B. A/c No. 2183. On 23-10-1985 Rs. 20,000 was brought by that customer for remittance. On 19-5-1986, Rs. 22,000 and on 16-10-1986, Rs. 5750 were brought for remittance by the account holder. Though they were received by the workman and entries were made in the passbook they were not posted in the ledger book. Ext. ME 3 is Passbook of S.B. A/c No. 2183 of Mr. Soman Pillai. Ext. ME 4 is ledger copy of that account. Ext. ME 40 is a statement of Soman Pillai given to the Vigilance Officer of the bank when an investigation was conducted by the Vigilance Officer (MW 2 in Ext/M1). MW1 identified the entries in the passbook made by the workman in his handwriting. He has also stated that corresponding entries were not made in the account books of the bank.

9. S/Shri Sesilamma and Rajan, joint account holders of S.B. A/c No. 5600, had remitted Rs. 30,000 on 30-8-1985 and another sum Rs. 38,310 on 3-9-1985. Though the amounts were received by the workman and necessary entries were made in the passbook, the amounts were not remitted into their account. The Passbook bore the initial

of the workman. Ext. ME 8 is the Passbook and Ext. ME 9 is ledger copy of the said account and Ext. ME 11 is S.B. pay-in-slip. The handwriting in the pay-in-slip is that of the workman. But it does not contain the signature of the customer or anybody. MW1 has given evidence to this effect and identified the handwriting as well as the initial of the workman.

10. An amount of Rs. 500 was remitted by one P. Rajappan Pillai in his S.B. A/c No. 10012 on 4-5-1985, Rs. 9400 on 17-10-1985 and Rs. 275 on 25-9-1986 (total Rs. 10,175). These amounts were received by the workman, but were not remitted into the account. However, necessary entries were made in the passbook of the customer in the handwriting of workman and initialed by him. Ext. ME14 is the Passbook. Ext. ME15 is ledger copy MW1 has identified the handwriting and initial of the workman in Ext. ME14.

11. Account holder, Mr. Moosa Kunju had remitted Rs. 38,000 and another sum of Rs. 2000 on 18-3-1987 into his associates they were not remitted into the account. However, necessary entries were made in the passbook and the passbook was given back to the customer. The remittance of Rs. 2000 was recorded in the passbook by the workman and the other amount, in the handwriting of his associate. Corresponding entries were not made in the account books of the bank. Ext. ME 37 is the Passbook. Ext. ME 38 is the ledger copy of the account and Ext. ME 39 is S.B. pay-in-slip. The pay-in-slip was written by the workman. MW1 has identified the handwriting of the workman. Thus a total sum of Rs. 40,000 was misappropriated by the workman and his associates.

12. Account holder, Shri Gopala Pillai had remitted a sum of Rs. 43,635 on various dates into his S.B. A/c No. 8033. Though they were received by the workman they were not actually remitted into the account and posted in the ledger and other account books of the bank. Rs. 10,500 was remitted on 21-5-1985, Rs. 135 on 4-7-1986, Rs. 10,000 in September, 1986, Rs. 8,000 on 27-10-1986, Rs. 14,000 on 1-12-1986 and Rs. 1000 on 20-12-1986 by the customer. In the Passbook all except Rs. 135 were entered in the handwriting of the workman. He had also initialed against two of the entries (Rs. 10,500 & 14,000). MW1 has identified the handwriting and the initial of two workman in the Passbook. Ext. ME 24 is the pass book. Ext. ME 25 is ledger copy of the account and Ext. ME 34 is pay-in-slip. They pay-in-slip was also filled up by the workman and the handwriting of the workman is indetified by MW1.

13. Thus, as per the report of the Enquiry Officer, an amount of Rs. 2,18,695 was proved to have been misappropriated by the workman and his associates. As per the charge, the amount involved in the misappropriation is Rs. 2,18,870. As per account books and other records the workman had remitted into different accounts of the customers a sum of Rs. 1,69,636 ps. 70 on various dates with a view to cover up the misappropriation and to avoid

notice of customers during withdrawals, the discrepancy in accounts. The Enquiry Officer had meticulously analysed the account books and the evidence on record and left no stone unturned while drawing the conclusion against the workman. There is ample evidence to prove the guilt of the workman. The elaborate and systematic way in which the Enquiry Officer has assessed the evidence and recorded his findings deserves appreciation and encomium, and not interference by this Court. The workman has not been able to point out any instance of prejudice or lapse on the part of Enquiry Officer in appreciating the evidence. He has rightly came to the conclusion that the workman is guilty of the charges levelled against him.

14. Point No. (3) :

Since the charges levelled against the workman are serious in nature and large sums were misappropriated by him affecting primarily the reputation of the bank and loss to the customers, deterrent punishment is called for and no leniency whatsoever is warranted. The punishment of dismissal in the circumstances is the proper punishment for a charge of the kind in question. I am not persuaded to strike a different note in the matter of punishment. Hence, I hold that the punishment is proportionate to the gravity of the offence.

15. In the result, an award is passed finding that the action of the management in dismissing the workman from service is legal and justified and the workman is not entitled for any relief. No cost. The award will take effect one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 16th day of March, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness of the Workman/Union :	Nil
Witness for the Management :	Nil
Exhibits for the Workman/Union :	Nil
Exhibits for the Management :	
M: Domestic Enquiry File	

नई दिल्ली, 30 मार्च, 2007

का.आ. 1116.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिणी रेलवे के प्रबंधालय के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुभव में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारा, इनाकुलम, कोची के पंचाट (संदर्भ संख्या 181/2006) का अकाशित करती है, जो केन्द्रीय सरकार को 29-3-2007 को प्राप्त हुआ था।

[सं. एल-41012/158/98-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1116.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 181/2006) of the Central Government Industrial Tribunal/Labour Court, Ernakulam Kochi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Southern Railway and their workmen, which was received by the Central Government on 29-3-2007.

[No. L-41012/158/98-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present

Shri P. L. Norbert, B.A., LL.B., Presiding Officer
(Friday the 16th day of March, 2007/25th Phalguna, 1928)

I. D. 181/2006

(I. D. 24/1999 of Labour Court, Ernakulam)

Workman/Union	Shri C. Kanakaratnam No. 751, Tankapatta Lane Pondurai Road, Railway Colony Erode-638 001
Management	Adv. Shri C. Govinda Swamy The Sr. Divisional Engineer Southern Railway, Palakkad Adv. Shri P.M.M. Najeebkhan

AWARD

This is a reference made by Central Government under Section 10 (1) (d) of Industrial Disputes Act, 1947 for adjudication. The reference is :

“Whether the action of the Senior Divisional Engineer, Southern Railway, Palakkad in terminating the services of Shri C. Kanakaratnam w.e.f. 11-1-1991 is justified? If not, to what relief the workman is entitled?”

2. According to the claimant, he was engaged as casual labourer in Southern Railway on 21-10-1981. He was working regularly thereafter and acquired temporary status w.e.f. 8-6-1984. While so, on 10-1-1989 a charge-sheet was issued to him alleging that he got employment on the basis of a bogus service card. An enquiry was conducted and the workman was found guilty of the charges and he was removed from service on 8-1-1991. The workman denies charges. For the cause of action that arose in 1981 the disciplinary proceedings were initiated in 1989 after 8 years. Due to long delay the workman is put to great hardship in adducing evidence to meet the charges. The workman has

not violated the Railway Service Conduct Rules as he was not a Railway servant in 1981. The workman was denied opportunity to make defence statement prior to the enquiry. He was not heard by the Disciplinary Authority. The Disciplinary Authority had no jurisdiction to initiate disciplinary proceedings. Copies of documents relied on by the management were not furnished to the workman. Similarly, charged employees were reinstated in service. Therefore the workman prays to declare the termination illegal and to direct reinstatement.

3. According to the management the workman was engaged as casual labourer on 21-10-1981 on the basis of casual labour service card for having worked earlier in Railway. Based on his continuous service as casual labourer he was granted temporary status w.e.f. 1-5-1984. Later it was found that the service card produced by the workman was bogus and the entries in the service card indicating that he was working under the Permanent Way Inspector, Gummidi poondi with LTI No. 761 were false and there was no separate unit as Permanent Way Inspector, Gummidi poondi and that section was under the control of Permanent Way Inspector, Poonneri. Hence the matter was enquired into through an enquiry officer. The workman was given reasonable opportunity to defend his case. The charges levelled against the workman was proved in the enquiry and he was found guilty and hence the punishment of removal was ordered by the Disciplinary Authority. Though the workman filed an appeal he did not succeed. The disciplinary proceedings were initiated by the competent authority. The documents relied on by the management were supplied to the workman by the Enquiry Officer. The workman is not entitled to any relief.

The evidence consists of the oral testimony of WW1 and documentary evidence of Exts. W1 to 5 on the side of workman and no evidence on the side of management.

4. When the matter came up for evidence the management remained absent continuously. Hence the workman was examined in chief by proof affidavit and documents on the side of the workman were marked. The workman has given evidence in tune with his contentions in the claim statement. Ext. W1 is the charge-sheet issued to the workman. Ext. W2 is the order of punishment imposed by the Disciplinary Authority. Ext. W3 is order of the Appellate Authority. Ext. W4 is judgment in O.A. 1365/91 of Central Administrative Tribunal, Eranakulam Bench. In O.A., the Appellate Authority was directed to consider the disciplinary action after getting the thumb impression in the service card compared with the specimen thumb impression of the workman by a finger print expert and pass necessary orders on the basis of expert opinion. Thereafter the Appellate Authority passed the same order of imposing penalty of removal from service finding that though the thumb impression on the service card and the specimen thumb impression are same, there was evidence to show that the workman had committed fraud by

producing a bogus service card. However the enquiry file containing the enquiry report, documents and proceedings are not marked and the Enquiry Officer is not examined by the management. Thus the management has failed to show that a fair enquiry was conducted and there are materials to sustain the findings of enquiry Officer. In the absence of any attempt by the management to sustain the findings and punishment it has to be held that the termination of the service of the workman is illegal. The evidence on the side of the workman is unchallenged.

5. In the result, an award is passed finding that the termination of service of Shri C. Kanakaratnam, the workman w.e.f. 1-1-1991 is illegal and unjust and the workman is entitled to be reinstated with consequential benefit. No cost. The award will take effect one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 16th day of March, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness the Workman/Union :

WW1—Shri C. Kanakaratnam (Proof of Affidavit only).

Witness for the Management : Nil

Exhibits for the Workman/Union :

W2—Copy of charge-sheet dated 10-1-1989 issued to workman.

W2—Penalty advice No. C. 16/ED/CKR dated 8-1-1991 issued to workman.

W3—Order dated 5-6-1991 of Appellate Authority.

W4—Certified copy of Order in O.A. 1365/91 dated 8-11-1993 of CAT, Ernakulam Bench.

W5—Order No. J/P. CAT. 1364/91 dated 26-7-1994 issued by Asstt. Personnel Officer to workman.

Exhibits for the Management :

नई दिल्ली, 30 मार्च, 2007

का.आ. 1117.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ ट्रावनकोर के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोजीकोड़े, केरल के पंचाट (संदर्भ संख्या 1/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/209/2003-आई.आर.(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S. O. 1117.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 1/2004) of the Central Government Industrial Tribunal/Labour Court, Kozhikode, Kerala now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of State Bank of Travancore and their workmen, which was received by the Central Government on 29-3-2007.

[No. L-12012/209/2003-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE LABOUR COURT, KOZHIKODE, KERALA STATE

Dated this the 18th day of November, 2005

Present

Shri. Balasubramanian, B. Com., B.A., LL.B.,

Presiding Officer

I. D. (C) No. 1/04

Between :

1. The Chairman,
State Bank of Travancore,
Head Office,
Poojappura,
Trivandrum-695012
2. The Assistant General Manager,
Region-III, State Bank of Travancore,
Zonal Office, P. B. No. 25,
Kozhikode-673004.Management.

And

- A. Balakrishnan,
Sangeetha,
Ambalapady,
Thullissery Road,
Wandoor P.O.,
Malayppuram-679328 ...Workman

Representations :

- Shri K. P. Damodaran Nambiar, Advocate, Calicut ...For Management
- Sri P. Muhammed Haneef, Advocate, Calicut ...For Workman.

AWARD

This reference was made by Government of India, Ministry of Labour u/s 10(1)(d) and Sub-section (2A) of the Industrial Disputes Act to adjudicate the justifiability and correctness of the action of the management in dismissing the worker by name, Sri Balakrishnan from service and to pass further reliefs.

2. The worker by name Sri A. Balakrishnan while employed as a clerk/cashier in the Manjeri Branch of the management bank, was dismissed from service on the

charge of unauthorized withdrawal and misappropriation of funds from the customers accounts through fictitious and fraudulent means and destroying some document to cover up the fraud committed. Punishment was imposed after conducting a domestic enquiry through a senior officer of the bank who held the worker guilty of all the charges. Ultimately the industrial dispute raised by the worker was referred to this Court and accordingly this I. D. was registered.

3. On appearance the worker challenged the very impartiality of the Enquiry Officer and the validity and propriety of the enquiry on various grounds. On the other hand, the management filed a statement supporting the correctness of the procedure of enquiry and conclusions entered by the Enquiry Officer. The validity and fairness of the enquiry was considered as a preliminary point. After enquiry the enquiry was found to have been fairly and properly held in accordance with law and majority of charges stands proved by legal and factual evidence. After upholding the enquiry both parties were heard on the proportionality of punishment.

4. The only point for consideration is :

Whether or not the impugned punishment was just and proper?

5. It was contended by the worker in his statement that the capital punishment of dismissal from service was illegal, improper unwarranted and unjustifiable. It was further state that the worker being a physical handicapped person having a clean service record and his whole family are dependent on him. On the other hand, management contends that the punishment awarded commensurate with her gravity of mis-conduct proved against the workman and in terms of the bi-partite settlement and if such dishonest and disloyal workers are treated with leniency, it will have a demoralising effect on the employees working honestly.

No doubt, physical disability of an errant worker cannot be a licence for the commission of any malpractice or fraud. But in this case it could be seen from evidence that it was impossible to commit the alleged fraud without the active or passive connivance or knowledge of co-workers. I have also held that the management has not succeeded in proving the charge of destruction of evidence to conceal fraudulent acts. There is also no evidence to show that the bank has suffered any monetary loss on account of the misdeeds committed by the worker as has been repaid. The worker has also long unblemished service of more than two decades. So the affects and circumstances do not warrant imposition of extreme penalty of removal from service which appears to be shockingly disproportionate to the misdemeanour committed. Interest of justice could be adequately met by reinstating the worker in service and forfeiting his entire backwages, and seniority by way of punishment.

6. In the result, an award is passed setting aside the action of the management bank dismissing the worker from service. In lieu thereof management is directed to reinstate the worker in service by forfeiting the entire backwages and seniority by way of punishment within 30 days of pronouncement of award.

Dictated to the confidential assistant, transcribed by her, revised, corrected and passed by me on the 18th day of November, 2005.

K. BALASUBRAMANIAN, Presiding Officer

APPENDIX

Witness examined from the side of the worker :

WW1—Balakrishnan A.

Witness examined from the side of the management :

W1—Sethumadhavan P.

Documents marked from the side of the worker : Nil

Documents marked from the side of the Management :

Ext. M1 : Register of Enquiry Proceedings and depositions.

Ext. M2 : File of charge sheet, reply to charge sheet, report of enquiry office, preliminary order, final order and order of the Appellate Authority.

Ext. M3 : File containing marked documents of the Enquiry Officer (Exts. P1 to P 31).

नई दिल्ली, 30 मार्च, 2007

का.आ. 1118.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ हैदराबाद के प्रबंधनतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण-II, नई दिल्ली के पंचाट (संदर्भ संख्या 174/2004), को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/164/2004-आई.आर.(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1118.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 174/2004) of the Central Government Industrial Tribunal/Labour Court-II, New Delhi, now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of State Bank of Hyderabad and their workmen, which was received by the Central Government on 29-3-2007.

[No. L-12012/164/2004-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE**BEFORE THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI****PRESENT**

Presiding Officer : R. N. Rai

I.D. No. 174/2004

In the matter of :

Shri Vinod Kumar,
 C/o Vyapar & Udyog Karamchari Sangh,
 118, Kishan Ganj Market,
 Old Rohtak Road,
 Kishan Ganj, Delhi

Versus

The Regional Manager,
 State Bank of Hyderabad,
 882, 1st Floor, East Park Road,
 Karol Bagh, New Delhi,

AWARD

The Ministry of Labour by its Letter No. L-12012/164/2004 (IR (B-I) Central Government Dt. 16-11-2004 has referred the following point for adjudication.

The point runs as under:

"Whether the action of The Regional Manager, State Bank of Hyderabad, 882, 1st Floor, East Park Road, Karol Bagh, New Delhi in terminating/discontinuing the service of Shri Vinod Kumar, S/o, Shri Ram Singh, Peon w.e.f. 19-4-2003 and not to give full salary of Peon from 17-1-1998 is just, valid and legal? If not, to what relief the workman is entitled and what directions are necessary in the matter?"

The workman applicant has filed claim statement. In the claim statement it has been stated that he was engaged on the post of Peon on a consolidated wages of Rs. 740. He has been given appointment after interview. He performed duties from 9.00 AM to 6.00 PM. He was not given the facilities available to him under the provisions of labour laws. Shri Abhijeet Manna, Narendra Singh and Shri Pratap Singh were junior to him. They were continued and made permanent but the workman has illegally been removed.

The management has filed written statement. In the written statement it has been stated that the workman never worked continuously even as a casual labour/daily wager. He was engaged on the basis of contingency basis when some permanent staff went on leave. The workman has raised this dispute on the grounds of false plea.

From perusal of the record it transpire that the workman has not filed any document with his claim statement. The workman was directed to file rejoinder and affidavit on 6-2-2006. He was absent on several dates and

neither rejoinder nor affidavit has been filed. Last opportunity was given on 28-2-2007 still the workman did not file either rejoinder or affidavit. There is no document on the record. The claim statement is not proved. The workman applicant is not entitled to get any relief as prayed for.

The reference is replied thus :

The action of the Regional Manager, State Bank of Hyderabad, 882, 1st Floor, East Park Road, Karol Bagh, New Delhi in terminating/discontinuing the service of Shri Vinod Kumar S/o Shri Ram Singh, Peon w.e.f. 19-4-2003 and not to give full salary of Peon from 17-1-1998 is just, valid and legal. The workman applicant is not entitled to get any relief as prayed for.

Award is given accordingly.

Date 28-3-2007

R. N. RAI, Presiding Officer

नई दिल्ली, 30 मार्च, 2007

का.आ. 1119.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई.एन.जी. बैश्य बैंक लि., के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, नई दिल्ली के पंचाट (संदर्भ संख्या 80/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/129/2004-आई.आर.(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S. O. 1119.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2004) of the Central Government Industrial Tribunal/Labour Court-II, New Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of ING Vysya Bank Ltd. and their workmen, which was received by the Central Government on 29-3-2007.

[No. L-12012/129/2004-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE**BEFORE THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI**

Presiding Officer : R. N. Rai I.D. No. 80/2004

PRESENT

Shri Jitesh Pandey

1st Party

Sh. Ajay Dahiya

2nd Party

In the matter of :

Shri Sanjeev Kumar,
S/o Shri Samul,
R/o H. No. 165, Sunlight Colony-1
Hari Nagar Ashram,
New Delhi-110014

Versus

The Vice President,
ING Vysya Bank Limited,
15, K. G. Marg,
New Delhi-110001

AWARD

The Ministry of Labour by its Letter No. L-12012/129/2004 IR (B-I) Central Government Dt. 04-06-2004 has referred the following point for adjudication.

The point runs as hereunder :

"Whether the action of the management of ING Vysya Bank Limited in terminating from service of Shri Sanjeev Kumar, Ex. Peon cum Field workman w.e.f. February, 2003 is just, fair and legal? If not, to what relief the workman is entitled to and from which date?"

The workman applicant has filed claim statement. In the claim statement it has been stated that he was appointed by the management of M/s. ING Bank w.e.f. September, 1998. Thereafter, in the year 2003, the name of the Bank was changed from ING Bank to ING Vysya Bank. The last drawn wages of the workman at the time of his illegal termination was Rs. 4,500.

That the workman performed his duties most effectively, honestly and sincerely. Due to flawless and unblemished service and remarkable performance of the workman, the respondent management appreciated the same on many occasions.

That the management was not providing any legal facilities to the workman for which he was entitled to under different labour laws.

That the workman had been demanding the legal facilities from the management but they did not pay any heed towards his demand. However the management got annoyed with the workman and started victimizing him on one pretext or the other.

That the management, in furtherance of its design of victimizing the workman, orally terminated the service of the workman w.e.f. 01-04-2003 when Ms. Sonu Halan Bhasin ordered the workman to go out of the office and workman was also not paid the earned wages for the month of March, 2003. It is submitted that the workman was in continuous services of the management w.e.f. September, 1998 till 31-03-2003, as mentioned above, as a permanent/regular employee.

That the management terminated the services of the workman without assigning any cause or reason and also without issuing any notice or charge sheet and without holding any inquiry. The management also failed to comply with section 25 F of the ID Act, 1947.

That the action of the management in terminating the services of the workman is illegal, arbitrary, unjustified, unlawful and malafide and the same has been done in colourable exercise of power.

That the termination of the services of the workman tantamounts to retrenchment as per Section 2 (oo) of the ID Act, 1947, however, the management neither paid nor offered to pay the retrenchment compensation to the workman at the time of his termination which is the conditions precedent as per the provisions of Section 25 F of the ID Act, 1947. Hence, the order of the management is void, inoperative, bad in law and against the principles of natural justice and accordingly, the workman is entitled to get full back wages from the date of illegal termination of his services.

On refusal of the management to reinstate the workman, the workman approached the labour authorities for conciliation which has not been fruitful for the workman. The workman I, thus, approached this Hon'ble Court/Tribunal with this statement of claim.

That the workman is still unemployed from the date of his illegal termination despite of his best efforts to get alternative employment and as such, is entitled to full back wages for the intervening period.

In the facts and circumstances, it is respectfully submitted that this Hon'ble Court/Tribunal may be pleased to :

- a. declare the termination of the workman as illegal/void;
- b. direct the management to reinstate the workman with full back wages, continuity of service and all consequential benefits;
- c. direct the management to pay to the workman all legal dues arising on account of his employment with the management.
- d. direct the management to pay to the workman his earned wages for the month of March, 2003; and
- e. pass such other and further orders as this Hon'ble Court/Tribunal may deem fit and proper in the facts and circumstances of the present case.

The management has filed written statement. In the written statement it has been stated that the statement of claim filed by the workman deserves to be dismissed in limine as it has no merits either in law or on facts.

That it is submitted that this Hon'ble Tribunal has no jurisdiction to adjudicate or to entertain the present claim as the claimant is not a workman as defined under

section 2(s) of the ID Act, 1947. It is further submitted that there was no employer-employee relationship between the answering respondent and the claimant. The claim as raised by the claimant therefore does not fall in the ambit of Industrial Dispute as defined under section 2(k) of the ID Act, 1947. The present claim of the claimant is thus liable to be rejected on this ground alone.

It is submitted that the claimant was never in the services of the respondent. However, the claimant's services were hired by the respondent only on the need basis to act as a delivery boy for which the claimant was duly reimbursed/paid against vouchers raised by him. In view of the above position the question of reinstating the claimant or granting of any other relief as claimed does not arise. It is settled law that when a claimant has not entered in service, a reference under section 10 of the ID Act based on assumption that he was removed from service is not tenable.

Admittedly the claimant was never gainfully employed with the respondent at any point of time nor there is any disclosure by the claimant as to under what capacity he was working with the respondent and whether he was working on casual, temporary or permanent basis. The question of his termination illegally or otherwise by the respondent does not arise. It is reiterated that the claimant was never employed by the respondent at any point of time and thus the allegations, averments and pleas raised in support by the claimant are false, baseless, frivolous, misconceived and an after thought.

It is submitted that the claimant was only performing duties of transitory nature on hire basis as and when required and was not appointed to a post. It is further submitted that no officer of the respondent had ever recommended the claimant to be employed as an employee of the respondent bank. The reliance placed by the claimant on the alleged communications stated to be recommendations are nothing but communications written by some employees of the respondent at the instance and representation of the claimant himself for seeking a job elsewhere. In view of the above position the claim of the claimant for his reinstatement or regularization does not survive.

That the present claim has been filed by the claimant with malafide intention based on false and misleading averments, concocted and twisted facts, misrepresentations and an after thought in an effort to extort money from the respondent. It is submitted that the claimant was only performing duties of transitory nature on hire basis and when required and was not appointed to a post. It is further submitted that the claimant's service were hired by the respondent only on the need basis to act as a delivery boy for which the claimant was duly reimbursed/paid against vouchers raised by him. The said vouchers were signed and approved only by officer(s) of ING Private Banking. Moreover, the cash paid to the claimant through vouchers

have been mentioned under the Taxi and Bus (travelling/ conveyance expense) head of the balance sheet. Copy of the voucher dated 17-01-2003 and travelling expenses bills are annexed as Annexure R 1.

That the claimant was thus reimbursed/paid cash against voucher signed and approved by the officer(s) of Private Banking ING according to the services he rendered. Further it is submitted that the claimant was duly paid fares whenever he was engaged for outside services. The claimant was never paid any allowance or salary. The claimant was reimbursed as per the expenses incurred by him and shown in the expenditure/expenses list/voucher submitted by him and signed and approved by the officer(s) of Private Banking ING. It is submitted that the said reimbursement cannot be termed as a salary. It is pertinent to mention here that as per the Rules and Regulations of the respondent where any amount is paid towards salary, the same is credited to the salary account. There is no provision of salary through direct cash payment to the regular employee/employee on contract basis with the respondent bank. The fact that the claimant was being paid in cash against vouchers and expenses clearly shows that the same cannot by any stretch of imagination be deemed to be a salary or that he was an employee/workman.

It is denied that Mr. Sanjeev Kumar was appointed by the management of M/s. ING Bank or ING Vysya Bank Limited w.e.f. 1998 to 2003 and it is further denied that he drew any salary amounting to Rs. 4500/- per month from the respondent management. It is submitted that his services were hired by the management only on need basis to act as a delivery boy for which the claimant was duly reimbursed/paid against vouchers raised by him.

It is denied that the claimant is entitled for any claims under any labour laws. It is also denied that he was victimized by the respondent and Mr. Sonu Halan Bhasin ordered the claimant to go out of the office. It is denied that the claimant was in continuous services of the management w.e.f. September, 1998 till 31-03-2003. It is reiterated that the services of the claimant was availed by the respondent only on hire basis as and when required. The respondent reiterated the stand taken by it in the preliminary objections and the same are not repeated herein for the sake of brevity. It is further submitted that the claimant was not an employee/workman of the respondent, the question of his termination from service or paying any salary etc. therefore does not arise.

It is denied that the said grounds/pleas are available to the claimant under the provisions of ID Act, 1947 for the reason that he is not the employee of the respondent. The claim of the claimant is not sustainable either in law or on fact as there is no relationship of employer and employee between the answering respondent and the claimant. The respondent reiterates its stand taken in the preliminary objections and the same are not repeated herein for the sake of brevity.

In the light of the submissions made herein above, this Hon'ble Tribunal may graciously please to:

- a. dismiss/reject the claim of the claimant with exemplary costs.
- b. pass such other/further order(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

The workman applicant has filed rejoinder. In his rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard arguments from both the sides and perused the papers on the record.

From perusal of the pleadings of the parties the following issues arise for determination:

1. Whether the workman has completed 240 days in each year during his period of employment September, 1998 to 31-03-2003 ?
2. Whether the workman is entitled to reinstatement ?
3. To what amount of back wages the workman is entitled ?

Issue No.1 :

It was submitted from the side of the workman that MW1 has admitted that the photocopies of documents filed by the workman are valid documents and MW1 has further admitted that the management has paid bonus to the workman. MW1 has further admitted that the workman has performed the duties of collecting documents from the customers. He was also entrusted with the duties of collecting cash on behalf of bank. He also collected documents and cash from other banks.

MW1 has further admitted that the workman has performed 240 days in each calendar year, so it is held proved by the evidence of MW1 that the workman performed the duties of Peon in the Bank. He was paid bonus and monthly wages.

It was further submitted that the workman was paid monthly wages. The workman has filed documents B-110 to B-134. These documents pertain to the monthly wages paid to the workman. MW1 has admitted that the photocopies of B-110 to B-134 are correct and they have been issued by the bank. These photocopies are of wages slip of different months in 2001 and 2002. MW1 has admitted that the workman has worked for more than 240 days in each calendar year of his employment. MW1 has admitted all the documents filed by the workman in his cross examination. So the documents filed by the workman are admissible in evidence and can be read in evidence. The workman has proved his case of 240 days work in the years

of his employment on the basis of documentary evidence also.

It was submitted by the respondents that the present claim is not entertainable in view of section 2(o) of the ID Act, 1947 as there was no employer-employee relationship between the respondents and the claimant and the reference is not an industrial dispute u/s 2 K of the ID Act, 1947.

The contention raised by the management is misconceived. Section 2 A has been inserted in the ID Act, 1947. Every workman is entitled to raise dispute himself or through an Advocate or a workman. Espousal of the union is not necessary. The workman has raised this dispute through his A/R, so the reference is competent and the contention of the respondents is not sustainable in view of insertion of section 2 A of the ID Act, 1947.

It was further submitted by the management that the services of the workman were hired by the respondents only on the need basis to act as delivery boy for which claimant was duly reimbursed/paid against vouchers raised by him. From perusal of the documents adverted to above it cannot be said that the workman was hired on need basis. He has regularly worked from September, 1998 to 31.03.2003. He has been paid monthly wages.

It was further submitted that the workman performed duties of transitory nature on hire basis as and when required and was not appointed to a post.

Section 25 F postulates that a workman who has completed 240 days work though engaged on temporary basis should be paid one month's pay in lieu of notice and retrenchment compensation. The documents establish that the workman has worked regularly from September, 1998 to March 2003 without any break. So, he has performed 240 days atleast in 1999, 2000, 2001 & 2002. This fact has been admitted by MW1, so further discussion is not required to prove the fact that the workman has worked for 240 days atleast for 4 years during his tenure of employment. The workman has worked for 6 years continuously, so it cannot be said that he was engaged on hire basis and on need basis. In case he has been engaged on hire and need basis in that case also the management is bound to pay one month's pay in lieu of notice and retrenchment compensation @ 15 days salary per year. It has nowhere been stated that the management has made payment and retrenchment compensation. The records establish that the workman was not performing duties of transitory nature; he was performing all the duties of a Peon in the bank's office. It is held that the workman has worked for 240 days in the year 1999, 2000, 2001 and 2002. This issue is decided accordingly.

Issue No. 2 :

It was submitted from the side of the bank that reinstatement is not the only relief in all the cases of illegal

termination. Section 11 A of the ID Act, 1947 provides for payment of compensation also.

It was submitted from the side of the workman that compensation is payable in cases where an undertaking has become sick or it has been closed or it is in economic loss. It has not been established that the bank is in economic loss and it is a sick Industry.

My attention was drawn by the Ld. Counsel of the workman to 2000 LLR 523 State of UP and Rajender Singh. The Hon'ble Apex Court ordered for reinstatement with full back wages as the services of the daily wager cleaner who worked for 4 years was dispensed with without following the procedure for retrenchment. In the instant case also no retrenchment compensation has been paid. This case law squarely covers the instant case.

It has been held in 1978 Lab IC 1668 that in case service of a workman is terminated illegally the normal rule is to reinstate him with full back wages.

My attention was further drawn to AIR 2002 SC 1313. The Hon'ble Supreme Court has held that daily wager even if serving for a short period should be reinstated.

It was submitted from the side of the workman that in the instant case Sections 25 F, G of the ID Act are attracted. In Section 25 of the ID Act it has been provided that if a workman has performed 240 days work and if the work is of continuous and regular nature he should be given pay in lieu of notice and retrenchment compensation.

It has been held by the Hon'ble Apex Court that there is no cessation of service in case provisions of Section 25 F are not complied. In the instant case no compensation has been paid to the workman.

In case a workman has worked for 240 days in a year and the work is of continuous and regular nature he should be paid retrenchment compensation. In case retrenchment compensation is not paid Section 25 F of the ID Act is attracted. There is no cessation of his services. He is deemed continued in service in the eye of law. In case there is breach of Section 25 F the service is continued and reinstatement follows as a natural consequence.

ID Act, 1947 has been enacted to safeguard the interest of the workmen belonging to poor segment of society. It appears that legislature wanted that such workmen should not be harassed un-necessarily so Section 25 F, U, T and Clause 10 of Vth Schedule have been enacted. The objects and reasons of ID Act, 1947 show that the respondent management should not be permitted to indulge in any unfair labour practice. The workmen should not be engaged for years and then they should be removed all of a sudden. There is provision of retrenchment compensation for his removal. Retrenchment compensation is for compensating him otherwise so that he can survive long interregnum of unemployment. In the instant case no retrenchment compensation has been paid.

It was submitted from the side of the management that the Hon'ble Apex Court in 2006 (4) Scale has put down a complete ban on regularization and reinstatement. The Hon'ble Apex Court has held that employment can only be made on the basis of procedure established in that behalf envisaged by the Constitution. Equality of opportunity is the hallmark and the Constitution enshrines affirmative action to ensure that unequals are not treated equal's. So public employment should be in terms of constitutional scheme.

It was further submitted that the Constitution Bench Judgment has afforded a right according to which the government is not precluded from making temporary appointments or engaging workers on daily wages.

The Hon'ble Apex Court has not declared the provisions of ID Act un-constitutional. The Government has got no license to make always appointment of daily wagers and to continue them for life time. Fixed term tenure appointments and temporary appointments cannot be the rule of public employment. At the time of making temporary appointments Articles 14, 16, 21, 23, 226 & 309 are infringed. There is no constitutional mandate that the Government is at liberty to go on giving fixed term appointments for the entire tenure of service of an employee.

No such Article of the Constitution has been pointed out under which the Government or Public Sector units can continue incessantly to give temporary and fixed term appointments again and again. Since fixed term appointments and temporary appointments are not governed by any constitutional scheme, such discrimination will amount to vicious discretion. The Government of Public Sector unit will go on resorting to the method of pick and choose policy and give temporary and *ad hoc* appointments to their favorites and thus the principles of equality enshrined in the constitution will be given a go bye. Such is not the intent of the Hon'ble Apex Court. However, in this judgment the provisions of the ID Act governing the services of the workman have not been declared un-constitutional. Reinstatement is the remedy provided in the ID Act for breach of several provisions enumerated therein or for breach of service rules provided in various labour welfare legislations.

Section 11 A of the ID Act stipulates that in case the Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstance of the case may require. According to this benign provision this Tribunal has the authority to set aside the order of discharge or dismissal and reinstate the workman on the terms and conditions as it thinks fit.

The Hon'ble Apex Court in 2006 (4) Scale has not annulled Section 11-A of the ID Act and the legislature has authorized this Tribunal to set aside dismissal or discharge on its consideration and direct reinstatement. The judgment cited by the management is not applicable in the facts and circumstances of the case.

A three Judges bench of the Hon'ble Apex Court has held in 1993-II-LLJ that termination of services affects the livelihood of not only of the employee but also of the dependents. So in case of illegal termination of service the workman should be reinstated.

Reinstatement should not be misconceived as regularization. By the order of reinstatement the *status quo ante* of the workman is restored. He is given back wages in order to compensate him for his illegal disengagement. This is a special remedy provided in ID Act and it has not been annulled and set aside by any judgment of the Hon'ble Apex Court. The provisions of the ID Act are still constitutional and they are to be given effect too.

In case the workman is reinstated with back wages the respondents have every right, after payment of back wages and reinstatement, to retrench him validly following the principles of first come last go so that Section 25 G & H of the ID Act are not violated.

In view of the law cited above and the facts pertaining in this case, the workman is entitled to reinstatement. This issue is decided accordingly.

Issue No. 3:

It was submitted by the management that payment of full back wages is not the natural consequence of the order of discharge or dismissal being set aside. It has been held in (2003) 6 SCC 141 that it is incumbent upon the labour court to decide the quantum of back wages.

It has been further held in this case that payment of back wages having discretionary element involved it is to be dealt with the facts and circumstances of the case. No definite formula can be evolved.

It has been further held in this case that payment of back wages in its entirety is the statutory sanction. In (2003) 4 SCC 27 the Hon'ble Apex Court held that in view of delay in raising the dispute and initiating the proceedings back wages need not be allowed. In the instant case there is no delay at least on the part of the workman in raising the dispute.

In 1978 Lab IC 1968—three Judges Bench of the Hon'ble Apex Court held that payment of full back wages is the normal rule. In case services have been illegally terminated either by dismissal or discharge or retrenchment, in such circumstance the workman is entitled to full back wages except to the extent he was ~~graciously~~ employed during the enforced idleness. In the instant case the workman was always ready to work but he was not permitted on account of invalid act of the employer.

In 2005 IV AD SC 39—three Judges Bench of the Hon'ble Apex Court held that reinstatement with full back wages is justified. In this case the workman has performed more than 240 days work and he has been retrenched without payment of compensation and pay in lieu of notice.

It was submitted from the side of the management that reinstatement is not the only remedy. In such cases the workman may be given compensation. Section 11-A of the ID Act, 1947 provides that in case of dismissal or discharge is found illegal reinstatement should be ordered. It has been held in a catena of cases by the Hon'ble Apex Court that reinstatement with full back wages is the normal rule. The statute provides for reinstatement. In certain exceptional cases where the undertaking has been closed down or it has become sick there may be order for payment of compensation.

In view of the facts and circumstances of the case the workman is entitled to 25% back wages.

The reference is replied thus : —

The action of the management of ING Vysya Bank Limited in terminating from service of Shri Sanjeev Kumar, Ex. Peon-cum-Field workman w.e.f. February, 2003 is neither just nor fair nor legal. The management should reinstate the workman w.e.f. February, 2003 with 25% back wages within two months from the date of the publication of the award.

Award is given accordingly.

Date : 29-3-2007.

R. N. RAI, Presiding Officer

नई दिल्ली, 30 मार्च, 2007

का.आ. 1120.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पुणे के पंचाट (संदर्भ संख्या 454/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-03-2007 को प्राप्त हुआ था।

[सं. एल-12025/1/2007-आई आर (बी.-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30 March, 2007

S.O. 1120.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 454/2000) of the Industrial Tribunal, Pune now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 26-3-2007.

[No. L-12025/1/2007-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRIGS. WANKHEDE, PRESIDING
OFFICER THIRD LABOUR COURT,
PUNE**

Reference (IDA) No. 454/2000

Central Bank of India
The Zonal Manager,
CBIC/o. 317 M.G. Road,
Pune (Maharashtra)-411 002Ist Party
and

Shri Vijay Baban More,
Bhopkhol College of Military Engineering,
Dapodi,
Pune (Maharashtra)IInd Party
Coram : Shri G.S. Wankhede

APPEARANCES

Shri Kasbekar—Advocate for I Party

Shri Dixit—Advocate for II Party

PART-I**AWARD**

(Date : 7-12-2006)

1. In view of the controversy in between the parties on the point of fairness of the enquiry, this Court framed Issues at Exh. 12 and treated Issue No. 1 as Preliminary Issue. The preliminary issues are as under. I recorded my findings towards them with reasons to follow :—

Preliminary issue	Findings
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1. Does Second Party proves that the enquiry conducted by the First Party on alleged misconduct is not legal, fair and proper? Negative
2. What Order ? As giving below

REASONS

2. Heard learned counsel of the Second Party Shri, Dixit and learned counsel of the First Party Shri Kasbekar.

Preliminary Issue No. 1 :

3. In order to substantiate its contention the Second Party declined to lead oral evidence by purhis Exh. 16. The First Party also has declined to lead oral evidence by purhis Exh. 43.
4. It is specifically contended by the Second Party in his statement of claim that the enquiry was not conducted according to the principles of natural justice. In view of this positive assertion the burden is upon him to prove the same.
5. It is pertinent to note here that Second Party did not step into the witness box and got examined himself or anybody on his behalf. There is no whisper that

how the enquiry is not legal, fair and proper. It is well settled law that the party who asserts the fact must prove by adducing legal and cogent evidence failing which, presumption would be proved the allegation as alleged.

6. However I wanted to go through the enquiry papers which is on record at Exh. 14. Admittedly, the chargesheet dt. 12-3-97 were issued to the Second Party on the ground of absenteeism. The actual enquiry were commenced on 29-4-97. The Second Party was present therein. The Enquiry Officer asked some questions to the Second Party such as whether he received chargesheet ? answer is Yes. Whether he understood the contents? answer is Yes. Whether he want to appoint any representative to defend himself? answer is no and whether charges are admitted ? answer is Yes. Thereafter the Enquiry Officer directed the Presenting Officer to put forth his case. The Presenting Officer submitted that as the Second Party admitted the misconduct, he did not want to lead oral evidence. The Enquiry Officer thereafter asked Second Party whether he want to say anything else in this connection. The Second Party thereafter replied that he wanted to submit his say within 7 days. The permission accordingly granted by the Enquiry Officer. However, record indicates that Second Party did not file his say within stipulated time nor requested Enquiry Officer for extension of time for filing the say. The Enquiry Officer on the basis of admission of misconduct concluded the enquiry on the very day. The proceeding further indicates that Presenting Officer submitted his written notes of argument and thereafter Enquiry Officer forwarded his findings to the management by holding the Second Party guilty. In this way, I find that so far as procedural party of the enquiry is concerned, there is no infirmity at all. On the contrary, Enquiry Officer followed the principles of natural justice by giving sufficient opportunity to the Second Party to defend himself. But because he admitted the alleged misconduct the enquiry were closed and therefore blame cannot be fastened upon Enquiry Officer that sufficient opportunity was not given to the workman. Thus, I find that Second Party failed to prove that enquiry is not legal, fair and proper. I answer accordingly this Issue in the negative and pass following order :

ORDER

1. It is hereby held and declared that enquiry conducted by the First Party against Second Party is legal, fair and proper.
2. No costs.

Place : Pune

Date : 7-12-2006

Sd/-
G.S. WANKHEDE, Presiding Officer

नई दिल्ली, 30 मार्च, 2007

का.आ. 1121.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पुणे के पंचाट (संदर्भ संख्या 553/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-03-2007 को प्राप्त हुआ था।

[सं. एल-12025/1/2007-आई आर (बी.-II)]

राजिन्द्र कुमार, डैस्क अधिकारी

New Delhi, the 30 March, 2007

S.O. 1121.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 553/99) of the Industrial Tribunal Pune now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 26-3-2007.

[No. L-12025/1/2007-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI G.S. WANKHEDE, PRESIDING OFFICER, THIRD LABOUR COURT, PUNE

Reference (IDA) No. 553/1999

The Assistant Manager,
Indian Bank
1 B Progress House,
54, Wellesley Road,
Shivajinagar, Patil Estate
Pune-411 005Ist Party

And

Shri Satish V. Ukidave,
A-8, Bank of India Colony,
17 Parvati
Pune-411 009IIInd Party

Coram : Shri G.S. Wankhede

APPEARANCES

Shri A.K. Gupte—Advocate for I Party.

Shri N.A. Kulkarni—Advocate for II Party.

AWARD

(Date : 16-2-2007)

1. This reference is made by Government of India, Bharat Sarkar, Ministry of Labour, Shram Mantralaya, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001 under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 for adjudication of industrial dispute between above referred parties over the following demands as mentioned in the Schedule :

"Whether the action of the management of Indian Bank in relation to its Zonal Officer, Mumbai in terminating the service of Shri Satish V. Ukidave w.e.f. 9-1-84 though he had withdrawn his resignation letter before its acceptance is legal and justified? If not what relief the said workman is entitled to?"

2. In short, the case of the Second Party is that he was in the employment of the First Party from 13-8-74 and was working as a Clerk in September 1983, he was transferred from Pune to Satara and in consequence to that he joined at Satara, On 9-1-84 he had submitted resignation of his services conditionally with the prayer that either may be transferred at Pune or the resignation may be accepted. After that the Bank did not inform him anything as to whether they have accepted or rejected the resignation. After waiting for considerable since on 6-8-84, 3-7-84 and 5-1-85 by letters requested the First Party to allow him to join on duties, but he was not allowed to join the duties. In fact on 5-1-85 itself the Bank issued him letter *inter-alia* contending that as per telephonic instruction from the Regional Office, the management cannot allow him to rejoin the duties. According to him, from 1984 to 1985 he was issued interview calls from the First Party for his promotion to Officer's cadre, and was also called to appear for examination. Again on 17-8-1987 he was called upon to appear for test of his promotion from clerk to Officer cadre.

3. The Bank has neither accepted the resignation letter dt. 9-1-84 nor allowed him to join the duties. He further submits that after 5-1-1985 the First Party has not specifically allowed him to join duties. On the contrary, the First Party by letter dt. 22-2-1989 communicated Second Party that his resignation letter dt. 9-1-84 is accepted with retrospective effect from 9-1-84. This act of First Party is of no consequences because the Bank has no right to accept resignation with retrospective effect. After 9-1-84 he was shown his willingness to resume his duties and withdraw his resignation by his own conduct. Thereafter, he was filed one application u/s. 33-C-2 but same was dismissed by the Court.

4. He further submits that his termination w.e.f. 9-1-1984 though he has withdrawn the resignation before its acceptance is illegal and unjust and therefore he is entitled for reinstatement on his original post with continuity of service and back wages. Prior to termination, he was not paid retrenchment compensation in accordance with Section 25-F of the Industrial Disputes Act as well as not complied with the provisions under Rule 81 of the said Act. In view of this, he submits that reference be allowed as prayed for.

5. The First Party by his written statement at Exh. 15 resisted the claim of Second Party. According to him, the reference is not true, legal and *bona fide*. The present dispute does not fall under Section 2A of the Act. The Second Party submitted his resignation on 3-1-1984 to be given effect from one month after 9-1-1984 i.e. effective from 9-2-84. There is no termination as on 9-1-84 and thus

the reference is itself bad and be answered in negative on this sole ground.

6. The Second Party was employed in the First Party at Sadashiv Peth in 1973 as a clerk. He was transferred to Satara vide order dt. 27-7-1983 and accordingly he joined there on 29-8-1983. He was regular at Satara Branch and took leave for several times. He found it difficult to run his business by working at Satara. Therefore he was remained absent for total 69 days from September to December, 1983. Thereafter, on 3-1-1984 he submitted letter and requested to transfer to Pune or otherwise treat the letter as resignation.

7. According to him the job of Second Party was transferable and he has never challenged his transfer but because of his business activities he preferred to resign than to work at Satara. According to First Party Second Party has not withdrawn his resignation at any point of time. Once Second Party tendered resignation the First Party has no choice to ask Second Party to continue to work.

8. In the present case, Second Party could have withdrawn resignation prior to 9-2-1984 which is not admittedly done. Therefore subsequent development have no relevance to create employer employee relationship. It was the intention of Second Party since beginning to avoid payment of loan to the Bank. He was gainfully employed in his painting business and has no intention to work with the Bank but was trying to extract money by one method or another. By various letter, the Second Party informed time and again that either he transferred to Pune or to settle his dues and has no point of time withdrawn the resignation. As the resignation tendered voluntarily, the question of compliance of Section 25 F or Rule 81 of the Industrial Disputes Act does not arise because there is no termination by the hands of First Party as alleged either orally or in writing. Thus the reference have no substance and therefore, it be answered in negative.

9. From the rival pleadings of parties above, the issues has been framed at Ex 1. 17. The issues are as under I recorded my findings towards them with reasons to follow :

ISSUES	FINDINGS
1. Does Second Party proves that his termination w.e.f. 9-1-84 is illegal ?	Negative
2. Whether he is entitled to the reliefs prayed for ?	Negative
3. What Award ?	As given below

REASONS

10. Heard learned counsel of Second Party Shri N. A. Kulkarni and learned counsel of First Party Shri A. K. Gupte.

11. In order to prove its case Second Party got examined himself at Exh. 19 in addition to it he filed certain

documents on record such as Call Letter dt. 12-6-84 at Exh. 46, letter dt. 5-1-85 at Exh. 47, call letter dt. 26-11-87 at Exh. 48 and letter dt. 22-2-89 at Exh. 49. The First Party by purshis at Exh. 42 declined to lead oral evidence. However filed certain documents on record i.e. Resignation Letter at Exh. 21, Annexure "D" dt. 21-2-84 at Exh. 31, Annexure E-1 dt. 1-3-84 at Exh. 22, Annexure E-2 at Exh. 1-3-84 at Exh. 32, Annexure G dt. 7-11-84 at Exh. 23, Annexure H dt. 6-11-84 at Exh. 24, Annexure I at Exh. 26, Annexure J dt. 28-3-86 at Exh. 27, Annexure K dt. 17-1-87 at Exh. 33, Annexure L dt. 22-1-87 at Exh. 34, Annexure M dt. 3-2-87 at Exh. 28, Annexure M dt. 6-2-87 at Exh. 35, Annexure O dt. 10-12-88 at Exh. 29, Annexure to the application under Section 33-C-2 of the Industrial Disputes Act at Exh. 30 and conduct written statement in the case of application No. IC-2/145 of 96. Hence the oral as well as documentary evidence of the respective parties.

ISSUE NO 1 :

12. There is no dispute about the employment of Second Party in First Party Bank as a clerk. Admittedly, Second Party was transferred to Satara from Pune in 1983 and in the month of January 1984 Second Party tendered resignation.

13. It is well settled law that parties to the reference cannot go or travel beyond the terms of reference. The terms of reference is as under :

"Whether the action of First Party in terminating the services of Second Party w.e.f. 9-1-84 though Second Party has withdrawn his resignation before its acceptance is legal and justified ?"

14. After carefully scrutinising the entire case papers and evidence on record, it is clear that First Party has not terminated services of Second Party either orally or in writing on 9-1-84 itself. The Second Party in his cross examination also admitted that nobody orally terminated his services. The record indicates that on 3-1-84 he addressed one letter to Zonal Manager of First Party Company through Manager Indian Bank, Satara with the contention that either to cancel his transfer and post him at Pune. If this is not possible then treat this letter as resignation of his services after period of one month from 9-1-1984. The meaning of this sentence is that he has submitted his resignation letter on 3-1-84 effective from 9-2-1984. This being the fact then the termination as alleged w.e.f. 9-1-84 is false and unaccepted. On this sole ground, the reference is liable to be answered in negative.

15. Admittedly, after so-called termination Second Party preferred one application under Section 33-C-2 before Labour Court No. 2 at Bombay vide application No. LC-2/145/96 wherein he stated that he has been wrongfully terminated by First Party w.e.f. 22-9-89. There is complete contradiction/variance so as the date of termination as per the Second Party himself. He himself does not know what was actual date of his so-called termination. As a matter of fact there is no termination by the hands of First Party at all as admitted by Second Party in his cross examination. On

the basis of contention of the letter of resignation dt. 3-1-84 the Second Party ought to have been withdrawn his resignation on or before 9-2-84 but he failed to do so. According to him he has withdrawn his letter of termination before its acceptance. For that he mainly places reliance upon document/letter dt. 3-7-84, 6-8-84 and 5-1-85. Now let us see the contents of these letters. So far as letter dt. 6-8-84 and 3-7-84 are concerned, it has not been duly proved as prescribed under the Law. However, if we go through the contents of these letters it appears that it is written by Second Party and addressed to Manager, Indian Bank, Satara. However the letter of resignation addressed to Zonal Manager, Indian Bank, Bombay. According to me when he tendered resignation to the Zonal Manager he ought to have been addressed these letters to Zonal Manager itself. In both these letters it is nowhere mentioned that he has withdrawn his resignation letter dt. 3-1-84. On the contrary, he simply requested the Manager, Indian Bank, Satara to allow him to join on duty. As a matter of fact the Manager of Satara Branch have no right to allow Second Party on duty because he has addressed the resignation letter to the Zonal Manager. Therefore, according to me both these letters are not letter of withdrawal of resignation.

16. Now let us see the letter dt. 5-1-85. By this letter he requested Manager, Satara Branch to transfer him within 15 days from Satara or to relieve from the services by settling all the dues. In this letter also it is nowhere mentioned that he is going to withdraw the resignation letter. By letter dt. 6-8-84, 3-7-84 and 5-1-85 it does not appear that Second Party withdrawal the resignation but the demand of Second Party was to allow him to join on duty. The First Party admittedly intimated Second Party by his letter dt. 5-1-85 itself that Second Party cannot allow to rejoin to the duties because of the telephonic instructions from the regional office. Thus, according to me the First Party because of resignation letter clearly intimated Second Party of his inability to join on duty by letter dt. 5-1-85 itself. Even though the Second Party remained silent till 1999 and for that there is no explanation at all.

17. Admittedly, after so called resignation letter even the First Party issued some letter *vide* Exh. 46, 48 and 49 calling upon him to appear for promotional post. Issuing these letters does not mean that Second Party has been illegally terminated by the First Party or Second Party withdrawing resignation letter. In the examination in chief itself the Second Party categorically deposed that he has been orally terminated on 9-1-84 without complying with the provisions of Section 25-F of the Industrial Disputes Act. This deposition is without pleading in the statement of claim. Moreover, there is no oral termination as alleged by Second Party. In absence of oral termination, the question of complying Section 25-F or Rule 81 of the Industrial Disputes Act does not arise.

18. The most important admission given by Second Party is that it was his intention till 3-2-87 that either to transfer from Satara to Pune or to pay his legal dues. This

sole admission indicates that till 1987 he has not withdrawn his resignation but every time appears to be pressurised First Party Bank either to transfer him to Pune and pay his legal dues.

19. The learned counsel of Second Party Shri Kulkarni in support of his contention places reliance in the provisions of Chapter 40 of provision of Award and Bipartite Settlement. I have carefully gone through the provision of this Chapter but the provision thereunder are not applicable to the case in hand because this is the case of resignation in which the Second Party till filing of the reference did not withdraw at all. Because of his intention till 1987 that either to transfer at Pune or pay his legal dues indicates that he does not want to serve with the First Party Bank at any point of time. The Second Party contended that he has been lastly intimated on 22-2-89 that his resignation letter accepted on 9-1-84 itself. According to him, the Bank has no authority to accept the resignation letter with retrospective effect. The wordings of this letter clearly indicates that prior to 22-2-89 the Second Party was intimated about the acceptance of resignation and not first time on 22-2-89. This letter is supposed to be intimation/reminder about acceptance of resignation earlier to 22-2-89.

20. In sum up there is neither termination w.e.f. 9-1-84 nor withdrawal of resignation as alleged because nothing has happened on 9-1-84 itself. Thus, I answer this issue in the negative.

21. In view of my findings towards above, the Second Party failed to prove his case of illegal termination as alleged and therefore not entitled to the reliefs sought for. I answer this issue in the negative and pass following order :

ORDER

1. The reference stands answered in negative.
2. No costs.

Place : Pune

Date : 16-2-2007

G. S. WANKHEDE, Presiding Officer

नई दिल्ली, 30 मार्च, 2007

का.आ. 1122.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बहोदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं-2, नई दिल्ली के पंचाट (संदर्भ संख्या 144/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-3-2007 को प्राप्त हुआ था।

[सं. एल-12011/166/2003-आई आर (बी.-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30 March, 2007

S.O. 1122.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 144/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 30-3-2007.

[No. L-12011/166/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, NEW DELHI

Presiding Officer: R. N. RAI. I.D. NO.144/2003

In The Matter Of :

Shri Ram Sewak,
C/o. Bank of Baroda Employees' Union,
The General Secretary,
BOB Employees' Union,
C/o. Bank of Baroda,
188, Abu Lane,
Meerut (UP).

Versus

The Assistant General Manager,
Bank of Baroda,
Bareilly Region,
129 - D, Civil Lines,
Bareilly (UP).

AWARD

The Ministry of Labour by its letter No.L-12011/166/2003-IR (B-II) Central Government dt. 21-10-2003 has referred the following point for adjudication.

The point runs as hereunder:

"Whether the action of the management of Bank of Baroda in terminating the services of Shri Ram Sewak, Part-time Sweeper w.e.f. 1-7-2002 is just, fair and legal ? If not, what relief is he entitled to."

The workman applicant has filed claim statement. In the claim statement it has been stated that the workman Shri Ram Sewak was working as part time sweeper in Khudaganj Branch of District Shahjahanpur, since 18th November, 1997 continuously and regularly without any break against a clear vacancy caused due to the sudden death of late Shri Dharam Dass. Late Shri Dharam Dass who was a Permanent part time sweeper in Khudaganj branch incidentally happened to be the father of Shri Ram Sewak.

That Shri Ram Sewak was being paid wages much below the prescribed norms of the Bank by Khudaganj

branch. On representation by Shri Ram Sewak, the Union had taken up the matter with the then Regional Manager in February 2000 for the payment of legitimate wages to him. On persuasion by Union, the Regional Manager had directed Khudaganj branch to pay him wages equivalent to half of scale wages of sub staff cadre in accordance with the Bank's guidelines with effect from his appointment in the Bank i.e. 18th November, 1997 *vide* his letter dated 27th April, 2000. The Branch Manager of Khudaganj branch had provided the photocopy of Regional Manager's letter dated 27th April, 2000 to Shri Ram Sewak, the copy of the same is enclosed as ANNEXURE-1.

That on instructions from Regional Manager, Khudaganj branch has paid to Shri Ram Sewak the difference of wages from 18th November, 1997 to August, 2000 through a banker cheque No. 445528, dated 30th August, 2000 for Rs. 26,547,36, the copy of the same is annexed herewith as ANNEXURE-2.

That the services of the workman were illegally and arbitrarily Terminated on 1st July, 2002 without any notice/notice pay and also without any notice/notice pay and also without complying with any norms of seniority. This action on the part of the management is completely violative of Section 25 (F), (G) and (H) as well as the provisions of the Industrial Disputes Act and also amounts to unfair labour practice.

The Management has filed written statement. In the written statement it has been stated that the workman has not approached this Hon'ble Tribunal with clean hands and in the Statement of Claim filed before the Tribunal he has concealed material facts and has tried to mislead this Hon'ble Tribunal by giving a truncated version of the true facts and circumstances of the case and the present dispute is therefore liable to be dismissed on this ground with exemplary costs.

Upon the death of Late Mr. Dharam Dass, part-time Sweeper in the Bank, Mr. Ram Sewak, S/o late Shri Dharam Dass applied for recruitment in sub-staff cadre in Bank's service on compassionate ground. A copy of application of Mr. Ram Sewak is enclosed and is marked as ANNEXURE R-1 (colly).

The rejection of the case for appointment on compassionate grounds has not been considered favorably, and the same does not fall within the purview of the revised scheme for recruitment of dependent of deceased employees on compassionate grounds. In this regard, a copy of the letter dated 26 June, 2002 is annexed herewith and is marked as ANNEXURE R-2. The rejection of the request of the workman was communicated to him through the Branch Manager, Khudaganj Branch, Bank of Baroda.

The scheme for recruitment on compassionate ground was amended/notified by the Bank due to the Judgment dated 4-5-1994 passed by the Hon'ble Supreme Court in the case of Shri Umesh Kumar Versus Union of

India & others. Wherein it was held by the Hon'ble Supreme Court that the recruitment on compassionate ground should not be used as back door entry in the organization and in the light of the judgement/scheme of the Bank the case of Mr. Ram Sewak for his recruitment on compassionate ground was rejected.

The relevant portion of the scheme of recruitment on compassionate grounds which has been relied upon for rejection of the case of the workman is enclosed herewith and is marked as ANNEXURE-3 (colly).

It is wrong and denied that the workman has been working as part-time Sweeper since 18th November 1987 in Khudanganj Branch of Distt. Shahjahanpur against a clear vacancy. The workman on the demise of his father late Shri Dhama Das *vide* his letter dated nil, received on 26-02-1998 by the Bank, requested the Branch Manager, Bank of Baroda Khudanganj for recruitment on compassionate grounds. A copy of the letter is already annexed above and is marked as ANNEXURE R-1. Since the request of the workman was under consideration of the Management, the workman was allowed to work on temporary daily-wage basis during the interim period.

The fact that the workman was allowed to work on temporary/ad hoc terms on daily-wage basis is evident from the letter-dated 27-4-2000, which has been annexed by the workman as Annexure-I with his Statement of Claim. Thus, no right has been vested in the workman to claim regularization/absorption on permanent basis on a post on which he was initially allowed to work on humanitarian considerations on the basis of a personal decision of the then Branch Manager. And once the application for recruitment on compassionate grounds has been rejected by the competent authority, the workman can not have any cause of action or grievance as his initial entry was not in accordance with rules and without following due process of recruitment/fresh appointment.

That since the workman was permitted to work on daily-wage basis on humanitarian grounds on demise of his father who was an employee of the Bank in the interregnum period while his application for recruitment on compassionate grounds was under consideration of the appropriate authority, the workman on rejection of his request and being relieved as a consequence thereof is not entitled to any notice pay or any other benefit under Section 25 F, G and H of the Industrial Disputes Act, 1947.

The workman applicant has filed rejoinder. In his rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

It transpires from perusal of the order sheet that the workman was asked to file affidavit in support of his case on 08-06-2006. He did not file affidavit on 4 dates i.e., 24-10-2006, 15-12-2006, 15-02-2007 and 14-03-2007. On 14-03-2007 opportunity for filing affidavit was closed and the management was heard. The workman has not filed

affidavit till date. ID cases are to be decided within six months in view of the relevant provisions.

The workman has not filed affidavit within six months, so the opportunity of filing affidavit has been closed after giving sufficient opportunity. The management was heard.

The case of the workman is that he was working as part time sweeper in Khudanganj Branch of District Sahajahanpur since 18-11-1997 continuously and regularly without any break against a clear vacancy caused due to sudden demise of Late Shri Dharam Das, the father of the workman, a permanent part time sweeper. The service of the workman was illegally terminated on 01-07-1997 without any notice/notice pay and also without complying with the norms of seniority.

It was submitted from the side of the management that the workman has concealed the material facts. The workman made request for appointment on compassionate basis as his father, a permanent part time sweeper has expired.

The workman moved an application in writing. He was engaged on compassionate ground and his case of compassionate appointment was to be considered. His case of appointment on compassionate grounds was rejected as he did not fulfill the criteria as per revised scheme for recruitment of dependent of deceased employee on compassionate ground. By letter dated 26-06-2002 the competent authority rejected the letter of appointment on compassionate ground. It has been observed by the Hon'ble Supreme Court in Umesh Kumar Vs. Union of India case that the recruitment on compassionate ground should not be used as back door entry in the organization and in the light of judgment of the Hon'ble Supreme Court the application of Mr. Ram Sewak for compassionate appointment has been rejected. The workman filed application dated 26-02-1998 and he was given temporary appointment and his application for compassionate appointment was being considered. So he has been permitted to work on compassionate ground in view of his application and his period of tenure cannot be taken to be the period of regular work. Under section 25 F of the ID Act, 1947 the workman is not entitled to compensation for the period of his engagement as part time sweeper.

It becomes obvious that the workman was engaged on his request on compassionate grounds. His request was considered by the bank and he was not found suitable as per the scheme of compassionate appointment in view of the law laid down by the Hon'ble Supreme Court referred to above. The workman is not entitled to retrenchment compensation in view of his request for temporary engagement till disposal of his application for his compassionate appointment. The workman is not entitled to get any relief as prayed for.

The reference is replied thus:

The action of the management of Bank of Baroda in terminating the services of Shri Ram Sewak, Part-time

Sweeper w.e.f. 01-07-2002 is just, fair and legal. The workman applicant is not entitled to get any relief as prayed for.

Award is given accordingly.

Date : 28-03-2007

R.N. RAI, Presiding Officer

नई दिल्ली, 30 मार्च, 2007

का.आ. 1123.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 79/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-03-2007 को प्राप्त हुआ था।

[सं. एल-12011/146/2001-आई आर (बी.-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1123.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 79/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the management of Syndicate Bank and their workman, received by the Central Government on 30-3-2007.

[No. L-12011/146/2001-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 12th March, 2007

PRESENT

Shri A. R. SIDDIQUI
Presiding Officer

C. R. NO. 79/2001

I PARTY

Shri B. Ramesh Shetty,
Prabhat House,
Gandhinagar,
NH-17, Ambalpady,
UDUPI
Karnataka State.

II PARTY

The Deputy General Manager,
Syndicate Bank,
Zonal Office, Syndicate
Towers,
UDUPI
Karnataka State.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10

of the Industrial Disputes Act, 1947 has referred this dispute *vide* order No.L-12011/146/2001-IR (B-II) dated 24th October 2001 for adjudication on the following schedule :

SCHEDULE

“Whether the action of the management of Syndicate Bank, Zonal Office, Udupi is justified in awarding the punishment of dismissal from service to Shri Ramesh Shetty, Attender, Syndicate Bank w.e.f. 26-9-2000 for not carrying out the transfer order ? If not, what relief the said workman is entitled to ?”

2. A charge sheet dated 24-1-2000 was issued to the first party in the following terms:—

CHARGESHEET

It is alleged against you as under:

You were working as Attender at IBRD, Accounts Department, HO Manipal from 2-7-1998 to 6-12-1999.

That you were relieved from HO IBRD : Accounts Department on 6-12-1999 *vide* relieving order Ref. No. 628/0052/HO/ACC/IRBD dated 6-12-1999 to our Shirur Branch on transfer, that you have not reported for duty at our Shirur Branch till 13-1-2000. You have absented yourself from duties without information/without submitting proper leave application/without prior sanction of leave, since 7-12-1999. That your absence from 7-12-1999 to 13-1-2000 has been treated as unauthorized by the Senior Branch Manager, Shirur branch being the competent leave sanctioning authority, and the same was communicated to you *vide* their letter No. 014/0174/STF/YAM dated 13-1-2000. With this unauthorized absence of 38 days you have absented yourself unauthorisedly for a total period of 153 days as on 13-1-2000.

Your above acts amount to gross misconduct in terms of the provisions of the Bipartite Settlement. We therefore, charge you for committing acts of gross misconducts of (i) remaining unauthorisedly absent without information continuously for a period exceeding 30 days in terms of Clause No. 19.5(p) of the Bipartite Settlement and for(ii) willful insubordination or disobedience of any lawful/ reasonable orders of the management in terms of Cl.No.19.5(e) of the Bipartite Settlement for not reporting for duty at our Shirur Branch on being relieved on transfer from HO : Accounts Department: Manipal.

You are hereby called upon to submit your statement of defence, if any, within 15 days from the date of receipt of this chargesheet failing which the matter will be proceeded further.”

3. The explanation offered by the first party dated 16-3-2000 not being found satisfactory, a DE was ordered against him. He participated in the enquiry proceedings taking the assistance of M.R Achar, the Deputy General Secretary of the union namely, Syndicate Bank Employees

Union and on the conclusion of the enquiry, Enquiry Officer submitted his finding holding the workman guilty of the charges leveled in the charge sheet. He was served with the copy of the enquiry report and submitted his comments thereon. Once again the Disciplinary Authority not being satisfied with the reply given by the first party on the enquiry report, he was proposed with the punishment of dismissal from service and was given an opportunity of personal hearing and then the Disciplinary Authority once again not being satisfied with the submission made by the first party confirmed the punishment of dismissal passed against him vide impugned punishment order.

4. The first party by filing his Claim Statement before this tribunal challenged the enquiry proceedings as opposed to the principles of natural justice and the findings of the enquiry officer as suffering from perversity and the order of dismissal passed against him as unjust and illegal. He challenged the transfer order passed against him on the ground that due to long years of consistent practice and the Bipartite agreement between the union and the management, the subordinate staff are not transferred except either on request or on promotion. He contended that he is an active member of the Syndicate Bank Employees Union and with a view to victimize him for his legitimate trade union activities, he was served with a memorandum dated 2-12-1999 and 3-12-1999 transferring him from head office, Manipal to Shirur branch which transfer was not out of bonafide exigencies of the bank but was clearly intended to victimize him. He was relieved on 6-12-1999 by virtue of above said transfer order and the union of which the first party is a member raised the dispute before the Assistant Labour Commissioner(C), Bangalore by filing necessary application on 4-1-2000 pointing out that the transfer order on the ground that he was exempted from transfer being a sportsman and the transfer order is unfair and malafide. The conciliation resulted into failure report and the Govt. of India by its order dated 31-7-2000 refused to make a reference of the dispute observing that management was within its right to deploy the manpower in the vested interest of the administration. However, by the time the order of refusal came, the first party had been subjected to serious disciplinary proceedings on the ground of disobedience to transfer order and unauthorized absence holding the threat of dismissal from service. Therefore, the order dated 31-7-2000 passed by the Central Govt. refusing to refer the dispute to this tribunal could not be challenged. He also contended that the charge of authorized absence leveled against him for a total period 37 days and the charge of disobedience of the lawful orders are not valid and proper and they have not been substantiated before the enquiry officer by sufficient and legal evidence and in the light of the terms of the settlement between the union and the management. He also contended that the documents produced by him at Ex.DEX-1 to 3 show that several employees have not been disturbed by way of transfer and they have been working at the head office for much longer period than him have not been taken into

consideration by the enquiry officer. Therefore, the order of the enquiry officer is perverse and liable to be set aside so also the dismissal order passed against him.

5. The management by its counter statement however, asserted and maintained that the first party was transferred to Shirur Branch which is about 75 kms away from Manipal within the linguistic area and in the same district. He was relieved from duty on 6-12-1999 but did not report for duty at Shirur branch despite the several reminders by way of letters sent to him to report for duty without any further delay. Therefore, since he failed to comply with the transfer order, a charge sheet dated 24-1-2000 was issued to him alleging gross misconduct of remaining absent unauthorisedly and continuously for a period exceeding 30 days and willful insubordination or disobedience of any lawful or reasonable orders of the management. His explanation dated 16-3-2000 was considered and not being found satisfactory DE was ordered against him. He took the assistance of Shri MR. Achar participated in the enquiry proceedings resulting into the enquiry report holding him guilty of the charges and thereupon, follow up actions were taken and dismissal order was made. The management contended that the enquiry was in accordance with the principles of natural justice, findings were valid and legal and that dismissal order was just and proper.

6. Keeping in view the respective contentions of the parties with regard to the validity and fairness or otherwise of the enquiry proceedings, this tribunal on 29-4-2004 framed the following Preliminary Issue :

“Whether the Domestic Enquiry conducted against the first party by the second party is fair and proper ?”

7. The management examined the enquiry officer as MW1 and got marked documents at Ex. M1 to M6. The first party filed his affidavit evidence by way of rebuttal and after having heard the learned counsels for the respective parties on the above said issue this tribunal by order dated 5-10-2004 recorded a finding to the effect that the enquiry conducted against the first party by the second party is fair and proper. Thereupon, on 18-8-2005 application was filed by the first party to allow him to lead evidence on the question of transfer order passed against him and that being allowed, he examined the above said MR Achar as his witness, WW2. Management also examined MV2 and got marked documents at Ex.M6 to M13 with regard to the past service records of the first party. Thereupon, the matter was posted for arguments on merits and I have heard the learned counsels on merits and posted the case this day for award.

8. Learned, counsel for the management, vehemently, argued that almost both the charges leveled against the first party namely, the willful insubordination of disobedience of lawful orders by the management and his unauthorized absence for a period of more than 30 days continuously have been substantiated during the course of enquiry by sufficient and legal evidence and the enquiry

report and enquiry findings are supported by valid and cogent reasonings in turn supported by the oral and documentary evidence produced by the management. He submitted that the transfer order infact was challenged by the first party by way of conciliation proceedings and the Govt. of India refused to make the reference of this dispute on the ground that management was justified in making the transfer. Therefore, the act of the first party in remaining absent from duty without reporting for duty at the transferred place amounts to insubordination and disobedience of lawful orders and since he remained absent unauthorisedly for a period of 30 days continuously, he was rightly found guilty of both the charges and therefore, findings of the enquiry officer and the dismissal cannot be any fault. He contended that dismissal also was justified keeping in view the gravity of the misconduct and his past service records to show that earlier he was punished by the management on four occasions with **Warnings and withholding of his increments.**

9. Whereas, learned counsel for the first party submitted that the first charge levelled against the first party that he disobeyed the lawful orders could not have been taken as proved having regard to the fact that the first party was working as a subordinate staff and was unable to report to the transferred place which was 75 Km. from the place he was working at the time of transfer. In this context learned counsel took me to the decisions reported in ILR 1995 Kar 175, enreported decision in Writ Appeal 1981/92 and Para 536 of Shastray Award. He nextly, submitted that even assuming for a moment that charges as levelled in the charge sheet have been proved against the first party, punishment of dismissal passed against him quite disproportionate keeping in view the gravity of the misconduct and in view of the fact that the first party was not involved in any misconduct of moral turpitude or of any misconduct like the one on hand in the past. He requested this tribunal to exercise its discretionary powers under Section 11A of the ID Act in modifying the dismissal order into a lesser punishment. Learned counsel did not comment upon the findings of the enquiry officer so as to highlight any factual or legal defects found therein so as to term them as perverse or arbitrary.

10. Keeping in view, the findings recorded by this tribunal on Domestic Enquiry issue in favour of the management, the only two important points emerged for my consideration were “whether the findings of the enquiry officer suffered from Perversity” and “whether the punishment of dismissal was disproportionate to the gravity of the misconduct committed by the first party”. As noted above, learned counsel for the first party did not comment upon the enquiry findings highlighting any sort of defects either factual or legal in order to show that the enquiry findings suffered from perversity. On going through the findings I am of the firm opinion that findings of the enquiry officer were well supported by sufficient and legal evidence in the form of oral testimony of MWI and the documents produced by the management to show

that the first party failed to report duty at Shirur branch and remained absent from duty undisputedly from 6-12-1999 to 13-1-2000. The fact that the first party was served with the transfer order and was to join duty there by the afternoon of 6-12-1999 has not been disputed and cannot be disputed. Infact as seen above, the first party approached the conciliation officer through the union challenging his order of transfer and conciliation having been failed, the Govt. of India refused to make reference of the dispute holding that the management were justified in making such transfers. Therefore, question as to whether the transfer order was legal or illegal or was inaccordance with the Shastray Award terms is not the question now to be determined by this tribunal. We are now concerned to decide upon a question as to whether the first party did not obey the transfer orders and remained unauthorisedly absent from duty for a period of more than 30 days continuously as on 13-1-2000. These two facts rather the charges have been very much proved in the oral and documentary evidence produced by the management during course of enquiry. The various contentions taken by the first party that his appointment was under the category of Sportsman, that his transfer was by way of victimization because of his trade union activities and that he was transferred to far off place have rightly been turned down by the enquiry officer. As could be read from the findings, the first party failed to establish before the enquiry officer that he was appointed under the Sportsman category or that he was a union office bearer. In fact WW2 was examined by the first party in his cross examination admitted that first party was not an office bearer. Para 536 of the Shastray award taken support by the learned counsel for the first party in order to show that his transfer order was not proper, in my opinion will not come to his rescue. It can be read from the above said para that so far as members of the subordinate establishment are concerned there should be no transfers ordinarily and if there are any transfers at all they should not be beyond the language area of the person so transferred and that subordinate staff should not be transferred outside the state or the language areas except with his consent. In this particular case the first party has been transferred to Shirur branch which comes under the very same language area and in the very same district which is the head office he was working at the time of his transfer. The decisions quoted above, on behalf of the first party also will not be of much use to him as they are on the point of transfer orders and as to what circumstances transfer should be done. In the first decision the case was involving activists of trade union and in the second case it was observed by the Hon'ble High Court that normally employees drawing small wages are not be transferred to far off places. As noted above, in this case, it is not established that he is a trade union activist and also not established that he has been transferred to far off place. Therefore, transfer order as such could not have been assailed by the first party in the first instance and since his attempt to challenge the said order have also failed, now he cannot make out a grievance that the order

being improper he could not report for duty. In the result, it must be held that the failure on the part of the first party in not reporting for duty was a misconduct committed by him as per the charge sheet levelled against him. He is also guilty of the charge of grave misconduct as undisputedly, he remained absent from duty for a period of more than 30 days continuously (in the instant case, for a period of about 37 days). The first party remained unauthorisedly absent for this period undisputedly, without any prior intimation to the authority concerned or on the sanctioned leave. He wanted to justify his absence from duty only taking shelter of the ground that transfer order itself was not proper. Therefore, both the charges have been proved against the first party by sufficient and legal evidence and the findings of the enquiry officer on those charges are valid and legal not to be interfered at the hands of this tribunal.

11. Now, the next question however, to be considered would be with regard to the quantum of punishment. The past records of service produced by the management showing that the first party was punished on four occasions, thrice by giving Warnings and lastly by stopping his one increment for six months certainly are not the punishments imposed upon him for the misconduct of the nature like one on hand. On all the four occasions he was punished for the misconduct of issuing cheques in favour of certain parties not being honoured on account of insufficient balance in his account. Moreover, as submitted by the learned counsel for the first party the present misconduct does not involve moral turpitude and was not such a grave in nature to warrant the punishment of dismissal. Infact, the Second Charge against the first party was of remaining absent unauthorisedly from duty for a period of 37 days i.e. exceeding by 7 days for the required period of 30 days. The act of the first party not reporting duty to the transferred place also cannot be viewed very seriously under the facts and circumstances of the case namely, the fact that he was working as a Class IV staff doing the duty of the attender and was transferred to a place 75 Km. away from the head office, Mangalore where he was working at the relevant point of time. Therefore, having regard to all these circumstances what appears to me is that punishment of dismissal passed against the first party was not proportionate and incommensurate with the gravity of the charge of misconduct proved against him. The management could have taken some lenient view and would have given one more opportunity to the first party not to repeat any such misconduct in future by imposing some lesser punishment. In the result, it appears to me that ends of justice will be met if the first party is punished by denying him back wages fully from the date of his dismissal till the date of his reinstatement withholding his four annual increments with cumulative effect from the date of impugned punishment order with continuity of service and other consequential benefits. Hence the following Award :

AWARD

The management is directed to reinstate the first party workman in service without back wages from the date of dismissal till the date of reinstatement

withholding his four annual increments with cumulative effect from the date of impugned punishment order however, with continuity of service and other consequential benefits. No costs.

(Dictated to PA transcribed by here corrected and signed by me on 12th March 2007)

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 30 मार्च, 2007

का.आ. 1124.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम व्यायालय बैंगलोर के पंचाट (संदर्भ संख्या 55/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-3-2007 को प्राप्त हुआ था।

[सं. एल-12011/62/2003-आई.आर.(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1124.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2004) of the Central Government Industrial cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of Vijaya Bank and their workmen, received by the Central Government on 30-3-2007.

[No. L-12011/62/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 8th March 2007

PRESENT

Shri A.R. SIDDIQUI
Presiding Officer

C. R. NO. 55/2004

I PARTY

The Regional Secretary,
Vijaya Bank Workers Organisation,
122, 1st Floor Srinath Complex,
New Cotton Market,
Hubli-29
Karnataka State.

II PARTY

The Deputy General Manager,
Vijaya Bank, 41/2, Head Office,
M. G. Road, Trinity Circle,
Bangalore-01
Karnataka State

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12041/62/2005-IR(B-II) dated 29th October 2004 for adjudication on the following schedule:

SCHEDULE

“Whether the claim made by Vijaya Bank Workers Organisation, Hubli for absorption of Shri P.K. Desai in terms of the settlement dated 19-8-1988 by the management of Vijaya Bank is legal and justified. If so, what relief the disputant concerned is entitled to?”

2. The case of the first party workman, as made out in the Claim Statement, briefly, stated is that he worked as a temporary peon in the management bank at its Bagalkot Branch and few other branches for various periods i.e. between 1988 to 2001 on temporary basis as a Peon(details of service given in para 2 of the Claim Statement). He was discharging permanent nature of work and performed his duties to the best satisfaction of his official superiors through out the said period. He contended that he had worked for 144 days between the period from 3-5-1988 to 28-11-1989 and had worked for 967 days between the period from 20-1-1990 to 16-6-2001. In the year 1997, he had worked for more than 240 days and had all the required qualification for being appointed as a permanent peon in the sub staff category of the bank. However, the bank has not extended him permanent employment, when he claimed his right of absorption into the service of the management by way of regular peon. The first party at Para 5 of his claim statement narrated the facts as under:

“The bank has entered in to a settlement on 19-8-1988 with the recognized unions of the bank to absorb all the temporary employees in the regular services of the bank. In terms of the settlement, all those who have worked as temporary peons for an aggregate of 90 days or more in the bank during the period between 1-1-1983 to 30-6-1988 were eligible to apply to the Bank for consideration for regular employment as peons in the service of the Bank. Further it was agreed to absorb all the empanelled candidates in the regular services of the bank and when permanent vacancy arise It was also agreed that as when temporary vacancy arises at branches/offices, subsequent to empanelment of candidates for regular absorption in the bank, the empanelled candidates shall be engaged in such temporary vacancies at the nearest branch/office depending upon their place of residence. The said settlement was for a period of 3 years commencing from 19-8-1988, which was subsequently renewed for another period of 3 years from 19-8-1991 and was

modified and extended for further period of 3 years from 30-12-1995. During this period, the bank has beneficially amended the terms of settlement by relaxing eligibility criteria to include all those persons who have worked for 90 days or more during the period from 1-1-1982 to 31-12-1989. The said beneficial amendment was brought in to effect to the terms of settlement by paper notification dated 24-6-1991. The workman had worked for more than 90 days in the bank during the period from 1-1-1982 to 31-12-1989 and was thus eligible for consideration for regular employment as peon in the service of the bank in terms of the settlement. The workman was also engaged by the bank at various branches till 2001 on temporary basis as peon as applicable to empanelled candidates in terms of the settlement. Inspite of the above, the bank has not extended the benefits available under the settlement to the workman despite the representations made by the workman.”

3. Therefore, he contended that the action of the management in not absorbing him in permanent service in terms of the settlement is illegal and against the provisions of the settlement and he is entitled to be absorbed as permanent employee of the bank with full back wages, continuity of service and all other consequential benefits.

4. The management by its counter statement however, contended that the bank with a view to provide opportunity to the temporary employees who had worked as temporary Peons in the bank for a period of 90 days or more in the past and with a view to have a cordial industrial relations in the bank holding discussions with the two recognized workmen unions functioning in the bank entered into a settlement on 19-8-1988 and that was widely circulated vide Circular No. 166/88. As per the terms of the said settlement, all temporary workmen who worked as peons for aggregate period of 90 days or more during the period between 1-1-1983 and 30-6-1988 were eligible to apply to the bank for consideration for regular employment as peons in the bank. Those candidates were to submit application to the bank as per the Proforma enclosed to the settlement not later than 60 days from the date of the settlement. The educational qualification, selection procedure, preparation of ranking list of empanelled candidates, their absorption and disqualification etc. were mentioned in the settlement. This settlement came to be entered having regard to the peculiar circumstances and in the interest of maintaining cordial industrial relations; that the bank on completion of selection process, prepared a ranking list of empanelled candidates and the same was circulated vide circular letter No.421/90 extending the period of operation of the said settlement by 3 years commencing from 19-8-1991 and ending on 18-8-1994 or till the panel was exhausted subject to review in the event of non-exhaustion of the panel and the panel was exhausted in

many of the divisions by 18-08-1994. However, the panels in some of the divisions situated in Andhra Pradesh and in Karnataka were not exhausted by that time. Therefore, a settlement was entered into during 1995 for preparing state wise seniority list while retaining the original division wise list. The settlements of the year 1991 and 1995 were in modification of the above settlement of the year 1988 entered into under Section 2(P) of the ID Act.

5. The management at Para 4 contended that the first party did not work for 90 days between the periods from 1-1-1983 to 30-6-1988 and has not submitted any application in terms of the settlement entered into the year 1988. Therefore, he was not eligible to get his name included in the ranking list/panel prepared by the bank based on the settlement. Therefore, now he cannot turn around and contend that he should be absorbed in the service of the bank based on the settlement dated 19-8-1988. Moreover, the ranking list was finalised and circulated during the year 1991 and whereas, the present dispute by the first party union espousing the cause of the first party workman has been raised only in the year 2002, which is after a lapse of 11 years period and on this count also the reference is liable to be rejected. The management denied the contention of the first party that there was any beneficial amendment to the terms of the settlement dated 19-8-1988 by relaxing eligibility criteria to include all those persons who had worked for 90 days or more during the period from 1-1-1982 to 31-12-1989. The management contended that there is no such beneficial amendment to the earlier settlement and the paper notification referred by the first party was issued by some of the Regional Offices for preparing a panel for the purpose of temporary engagement and therefore, the first party cannot take advantage of the same and that paper notification will not confer any right upon him to get regular employment as peon in the bank. The management also contended that the representations referred to by the first party in his Claim Statement also did not confer any legal right for him to claim appointment on permanent basis. The management contended the non inclusion of the name of the first party in the panel prepared by the bank during the year 1991 based on the settlement dated 19-8-1988 was on account of non-fulfillment of eligibility criteria prescribed therein and on account of non submission of the particulars by him. Therefore, there is no illegality in the action of the management in not regularizing the services of the first party as a permanent employee. The management therefore, requested this tribunal to reject the reference.

6. During the course of trial, the management examined one witness as MW1 said to have been working as Sr.Branch Manager by filing his affidavit. The averments in his affidavit are just repetition of the various contentions taken by the management in its counter statement referred above. On his part, the first party also filed his affidavit reiterating the various contentions taken by him in his

Claim Statement and in his further examination chief got marked 29 documents at Ex.W1 to W29.

7. During the course of cross-examination of MW1, nothing worth has been elicited so as to suggest that the first party workman is still having a right to get his services absorbed by the management bank in the light of the above said settlement dated 19-8-1988. The cross-examination of MW1 on behalf of the first party was mainly focussed upon the document at Ex.W2, a paper notification issued by the Regional Office of the management bank calling upon the applications from the temporary workers who worked for a period of 90 days between 1-1-1982 to 31-12-1989. MW1 was unable to say as to on what basis or on what document this paper notification was issued but added to say that it appears to have been issued and the Regional Office of Bangalore or Mangalore. He denied the suggestion that it was issued by the head office at Bangalore/Mangalore. He had no record to show that this paper notification was issued against the instructions given in the said circular dated 19-8-1988 as mentioned in his affidavit.

8. During the course of cross-examination of the first party by the management, it was elicited that there was no appointment order in writing to the first party when he joined his services at Bagalkot branch on 3-5-1988. It was elicited that he was working as temporary peon there on payment of daily wages and that at no branch he was issued with any appointment order. He admitted that he has not filed any application seeking absorption of his services as per the circular at Ex.W1. He admitted that he has not worked for a period of 90 days during the period from 1-1-1983 to 30-6-1988. He admitted that he was being engaged by the branches whenever a permanent peon was not on duty. He denied the suggestion that in no branch he worked for 240 days continuously.

9. Both learned counsels for the first party as well as the management have submitted their written arguments in line with the contentions they have taken in their claim statement and counter statement respectively.

10. The facts undisputed are that the first party workman worked with the various branches of the management bank between the year 1988 and 2001. The particulars of the service period given by the first party in his Claim Statement at Para 2 to the effect that he worked in Bagalkot branch for a period of 144 days between 3-5-1988 and 28-11-1989, for a period of 54 days between 20-1-1990 and 10-5-1990, for a period of 20 days between July 1990 and August 1990, for a period of 24 days between January 1991 and March 1991 and that he worked for a period 112 days at Teggi branch between 5-10-1995 and 24-1-1996, for a period of 80 days at Guledgud branch between the period March 1996 and January 1997, for a period 281 days at Mahalingpur branch between 3-2-1997 and 27-12-1997, for a period of 78 days at Tilakwadi branch between

29-12-1997 and 4-3-1998, for a period of 56 days at Naganoor branch between 20-3-1998 and 18-5-1998, for a period of 112 days at Asangi branch between 8-3-1999 and 30-6-1999, for a period of 75 days at Guledgud branch between 30-6-2000 and 15-9-2000 and again for a period of 75 days at Teggi branch between 19-3-2001 and 16-6-2001 has not been disputed by the management either in the counter statement or in the statement of MW1. The various documents produced by the first party apart from the first two documents namely, the settlement dated 19-8-1988 and the paper notification referred to supra marked at Ex.W1 and W2 respectively are not relevant for the purpose as they speak to the facts of his rendering services with the various branches of the bank and therefore are not at all relevant for the purpose or for the purpose of deciding the controversial issue before this tribunal. The only question rather the point under reference referred to this tribunal to be decided as could be read from the reference schedule is “whether the first party union is justified in seeking absorption of the first party workman into the services of the management bank in terms of the settlement dated 19-8-1988 and if so, to what relief the workman is entitled to?” The fact that the first party workman did not work with any of the branches of the management bank much less with the Bagalkot branch for a period of 90 days in between 1-1-1983 and 30-6-1988 has been very much admitted by the first party himself. The very particulars of the service period shown by the first party at Para 2 of his Claim statement as well as in his affidavit at Para 2 would disclose that for the first time he joined the services of Bagalkot branch on 3-5-1988 and subsequently, for the various periods he worked with the bank until March 1991 as noted above. Therefore, as per the very statement of first party in his Claim Statement as well as in his affidavit evidence and his examination he worked with the management bank i.e. Bagalkot branch only from 3-5-1988 onwards. Even if, it is to be taken that he worked between 3-5-1988 and 30-6-1988, the period of his service during the said period will not be more than 60 days. Therefore, undisputedly, the first party has not worked with the management bank for a period of 90 days in between 1-1-1983 and 30-6-1988 which was the condition precedent for any temporary peon to seek benefit under the aforesaid settlement dated 19-8-1988 for absorption of his services with the bank on permanent basis. As per the said settlement, all temporary workmen who worked as Peons for aggregate period of 90 days or more in the bank during the period between 1-1-1983 and 30-6-1988 only were eligible to apply to the bank for consideration for regular employment as peons in the bank. In the instant case, the first party workman has not worked for a period of 90 days between 1-1-1983 and 30-6-1988 as in his own words admits that he joined the services of the management for the first time only on 3-5-1988. It was well contended by the management that this settlement was a one time measure and was not applicable to all the persons engaged on

temporary basis if they did not fulfill the eligibility criteria provided under the said settlement. A reading of the clause 7(b) of the said settlement would clearly reveal that the said settlement was entered between the parties namely, the union representatives and the management representatives having regard to the peculiar circumstances not to be taken advantage of as precedence at any level or at any forum. Therefore, by virtue of the said settlement the first party was not entitled to seek absorption of his services having failed to fulfill the condition precedent of 90 days services during the aforesaid period. Even otherwise, it is not in dispute, rather, admitted by the first party himself in his cross-examination that he has not submitted his application with the management bank seeking absorption of his services as per the circular at Ex.W1 which incorporated the aforesaid settlement dated 19-8-1988. The fact that he did not work for a period of 90 days between 1-1-1983 and 30-6-1988 also has been very much admitted by the first party in his cross examination. It is not in dispute that settlement dated 19-8-1988 was renewed on 6-8-1991 and certain modifications were made vide settlement dated 30-12-1995. The modified settlement was effective for a period of 3 years from 30-12-1995 but as contended by the management it was applied only to the candidates who were in the original ranking list for the period between 1983 and 1988 as per the settlement dated 19-8-1988 and who were still not absorbed into the regular services of the bank. The aforesaid facts spoken to by MW1 in his affidavit have not at all been denied and contended by the first party in his cross examination. It is also not disputed by the first party that his name was not included in the original ranking list as he failed to apply for the employment on the basis of the said settlement in question. The contention of the first party that the bank had beneficially amended the terms of settlement by relaxing eligibility criteria to include all those persons who worked for 90 days or more during the period from 1-1-1982 to 31-12-1989 and that this beneficial amendment was brought into effect to the terms of settlement by paper notification dated 24-6-1991 and therefore, he having worked for such a required period of 90 days between the aforesaid period is eligible for consideration of regular employment, as rightly intended for the management deserves no consideration in deciding the issue in controversy between the parties namely, the issue as to whether the first party was entitled for absorption of his services under the settlement dated 19-8-1988. First of all the first party has not produced any such amendment so to say beneficially amended terms of the settlement and he cannot be allowed to contend that any such amendment was given effect by way of above said paper notification at Ex.W2. In fact as contended for the management we are not supposed to go into the aforesaid alleged beneficial terms of the settlement or the paper notification as in doing so we will be stepping out of the scope of the points of reference referred to this tribunal

for the purpose of adjudication of the dispute. In the instant case, the only condition to succeed in the dispute, to be fulfilled by the first party was to show that he worked for a period of 90 days between 1-1-1983 and 30-6-1988 so as to get the benefit of the settlement dated 19-8-1988. This condition for taking advantage of said settlement has remained to be fulfilled by the first party, as undisputedly he did not work for a period of 90 days during the aforesaid period. In the result and for the foregoing reasons, this tribunal has absolutely no doubts in its mind to come to the conclusion that the first party fails to substantiate his claim of absorption and hence the reference is liable to be rejected. Hence the following Award:

AWARD

The reference stands dismissed. No costs.

(Dictated to PA transcribed by her corrected and signed by me on 8th March 2007)

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 30 मार्च, 2007

का.आ. 1125.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार-औद्योगिक अधिकारण/श्रम न्यायालय बैंगलोर के पंचाट (संदर्भ संख्या 61/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-3-2007 को प्राप्त हुआ था।

[सं. एल-12011/164/2002-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1125.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of Vijaya Bank and their workmen, received by the Central Government on 30-3-2007.

[No. L-12011/164/2002-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BANGALORE

Dated 21st March, 2007

PRESENT

Shri A. R. SIDDIQUI,
Presiding Officer

C. R. No. 61/ 2002

I PARTY

The General Secretary,
Vijaya Bank Employees Association,
No. 67, Kengal Hanumanthaiah Road,
Bangalore-560027

II PARTY

The Regional Manager,
Vijaya Bank, Head Office,
41/2, M.G. Road, Bangalore-560001

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12011/164/2002-IR(B-II) dated 30th October 2002 for adjudication on the following schedule:

SCHEDULE

"Whether the management of Vijaya Bank is justified by removing Shri H.C. Jayaprakash, Clerk from service w.e.f. 7-9-2001? If not, what relief the workman is entitled to and from which date?"

2. A charge sheet dated 19-2-2001 came to be issued to the first party workman in the following terms :

CHARGE SHEET

"Whereas there are prima facie grounds to believe that you have committed acts of misconduct, the particulars whereof are furnished hereunder :

You were working as a Clerk at our Tiptur branch from 10-4-1992 till the date of suspension on 26-5-2000.

You were entrusted with the supervisory duties on 31-3-2000 and as such you were incharge of cash, SB, OD and CC section. It is reported that Shri S. Sanjay had LMV account 10/99 at Tiptur branch. On 31-3-2000 representative of Shri S. Sanjay came to the branch for remitting cash of Rs. 2,300 to the LMV account 10/99 of Shri S. Sanjay after business hours. Since you were incharge of the cash Section, received the cash along with the pay in slip and handed over the counterfoil of the slip duly affixing banks seal but without the signature on the branch Manager/Asstt. Branch Manager. Further you failed to hand over the cash of Rs. 2300/- to the credit of LMV 10/99 as late cash to the cashier. You have not accounted the same as late cash receipt and also the seal of 'late for today's credit' is affixed on the slip as well as on the counterfoil and no entry is made in the cashier's Scroll /officers scroll. As the amount received by you can be credited to the account only on next business/working day, 1st April being non business working day and second being Sunday, you have altered the date on pay in slip as 2-4-2000 and kept the cash along with the pay in slip in your custody and concealed the said fact from the knowledge of the branch manager/ABM. However, for having received the cash you have made an advance entry in the pass book of the party

for the date 3-4-2000. Incidentally, you were on leave on 3-4-2000.

On 28-4-2000 the party came to the branch and expressed his intention to clear the balance existing in the LMV account. You have advised the party to come next day i.e. on 29-4-2000 with an intention to conceal the misdeed of not crediting the amount of Rs. 2300 on 3-4-2000.

On 29-4-2000 you had advised the cashier Shri N. Narasimha Murthy to release the slip with the cash receipt stamp affixed even though you did not pay the cash of Rs. 2300 immediately and however, the cash was remitted by you subsequently. The date in the pay in slip originally submitted by the party was altered by you as 29-4-2000 and posted the credit voucher and signed for having checked the entry in the LMV ledger.

An investigation into the said matter revealed that you did not account the amount received by the party immediately i.e. on 31-3-2000 and misappropriated the amount from 31-3-2000 to 29-4-2000. Further, cash received after business hours is not accounted as late cash and violated all the instructions stipulated in codified circular No. 44/2000 and the instructions stipulated in Book of Instructions.

It is, therefore, evident that you have temporarily misappropriated the amount remitted by the representative of Shri Sanjay for personal gain. Your aforesaid acts are prejudicial to the interest of the bank and the same amounts to gross misconduct.

You are in the habit of using credit card indiscriminately without maintaining the sufficient balance in the OD account maintained at Tiptur branch. It is reported that you have misused the credit card bearing No. 5421 7613 2400 0410 issued to you by not maintaining sufficient balance in your OD Account No. 3/2000 at Tiptur branch. As a result of indiscriminate transaction/withdrawal against the said credit card the account is showing excess overdrawning of Rs. 28,822 which is beyond the sanctioned limit of Rs. 30,000 as on 31-7-2000. Further you have utilized the said credit card for commercial transaction and thus utilized the credit card for purposes contrary to which it was issued.

Thus your aforementioned acts you have deliberately violated the instructions contained in HO Circular 14/93, 209/03, 83/96 and 74/97 and expose the bank to financial loss and also failed to comply with the lawful and reasonable instructions of the official superiors. Your said act also constitute financial indiscipline and failure to manage your private affairs in such a manner so as to avoid habitual indebtedness which are prejudicial to the interest of the bank.

Your above acts/commission constitute misconduct under the relevant provision of the Bipartite Settlement 1966.

Therefore, the bank charges you as under :

- (1) Your act of temporarily misappropriating the amount remitted by the representative of Shri Sanjay(LMV10/99) as mentioned above amounts to an act prejudicial to the interest of the bank and hence constitutes gross misconduct under Sub-clause (j) of Clause 19.5 of Chapter XIX of Bipartite Settlement.
- (2) Your act of using the credit card without maintaining/providing sufficient balance to meet credit card transaction in your OD Account amounts to act of prejudicial to the interest of the bank, which constitutes gross misconduct under Sub-clause (j) of Clause 19.5 of the Chapter XIX of the Bipartite Settlement, 1966.
- (3) Your failure to regularize excess drawings in your OD account inspite of clear instruction in HO circulars pertaining to credit card operations issued from time to time by the managements amounts to act of disobeying the lawful and reasonable instructions of the Management, which constitutes gross misconduct under Sub-clause (e) of Clause 19.5 of Chapter XIX of the Bipartite Settlement, 1966.”

3. The first party submitted his explanation denying the charges leveled in the charge sheet and the management/Second Party not being satisfied, ordered Domestic Enquiry against him into the charges as leveled in the charge sheet. DE was conducted being participated by the first party and on the conclusion of the enquiry, findings were submitted by the enquiry officer holding him guilty of both the charges leveled against him. He was supplied with the copy of the findings and submitted his comments, thereon. Once again the management not being satisfied by the explanation offered by the first party, he was proposed with the punishment of dismissal and after the personal hearing being conducted, punishment of removal from service was confirmed.

4. It is aggrieved by the impugned punishment order passed against the first party, he raised a dispute before the conciliation officer resulting into the failure report and thereupon the Government of India referred the matter to this tribunal for adjudication of the dispute.

5. The first party challenged the impugned punishment order through General Secretary, Vijaya Bank Employees Association, Bangalore by filing his claim statement as unjust and illegal and also challenged the enquiry findings holding him guilty of the charges as perverse and the proceedings of the enquiry held against him as opposed to the principles of natural justice.

6. The management by its Counter Statement however, asserted and maintained that the order passed by it removing the first party from its services was just and legal and the findings of the enquiry officer holding him guilty

of the charges suffered from no perversity being supported by sufficient and legal evidence. The management also contended that a fair and reasonable opportunity was given to the first party defending himself during the course of enquiry and that the enquiry was conducted in accordance with the principles of natural justice.

7. Keeping in view the respective contentions of the parties with regard to the validity and fairness or otherwise of the enquiry proceedings this tribunal took up the said question as Preliminary issue.

8. During the course of trial of the said issue, the management examined the enquiry officer as MW1 and got marked 9 documents at Ex. M1 to M9. By way of rebuttal the first party examined himself and after having heard the learned counsels for the respective parties, this tribunal by order dated 14-10-2005 recorded a finding on the above said issue to the effect that the Domestic Enquiry conducted against the first party by the second party is not fair and proper giving opportunity to the management to adduce evidence on merits of the case. On merits, the management in all examined 5 witnesses as MW2 to 6 and got marked 17 documents at Ex. M10 to M26. The first party filed his affidavit evidence and in his further examination chief got marked two merit certificates issued in his favour by the management at Ex. W1 series.

9. The statement of MW2 in his affidavit by way of examination chief relevant for the purpose is that on 31-3-2000 as usual he sent a sum of Rs .2300 through his brother, Mr. Vijay Shinde (MW3) for remittance against his loan account at Vijaya Bank by filling the challan/pay in slip and he was told by his brother that since 31-3-2000 was not a business transaction day for the bank he handed over the amount to Shri H.C. Jayaprakash (first party) and received the counter foil from him with bank seal altering the date as 2-4-2000. He (first party) also made entry to the above effect in the pass book. He stated that on 29-4-2000 he (MW2) visited the branch in order to close his loan account and to his surprise it was found that the amount he remitted through his brother on 31-3-2000 was not credited to his loan account. On enquiry he came to know that Mr. Jayaprakash (first party) had received the amount from his brother passing the counter foil of the challan and making the entries in the pass book. He then came to know that the amount was paid to the first party was not credited to his account and was misappropriated by the first party. He stated that he was given to understand that, later on, first party remitted sum of Rs. 2300 on 29-4-2000 by altering the entries in the bank records. Thereupon, he made a complaint to the branch manager and a written complaint to the General Manager to take action against the first party. In his further examination chief he referred to his complaint at Ex.13, the challan/ pay in slip/counter foil at Ex. M14 and his passbook at Ex. M15 and the certified copy of the pay in slip at Ex. M16. In his cross examination it was elicited that the ink entries made in Ex. M14 are in his writing and so also

the writing in Ex. M16. He admitted that signature in the date column on Ex. M16 for having altered the date as 29-4-2000 is of his brother. It was elicited that he did not visit the bank to close his above said loan account in between 31-3-2000 and 29-4-2000. It was elicited he did not ask the bank not to charge interest to the above said amount of Rs. 2300 for the period in between 31-3-2000 & 29-4-2000 on the ground that he had already deposited the said amount. He never met the first party in between the said period. The passbook was all along with him even after the closure of the said account. He denied the suggestion that entries in the passbook are not in the handwriting of the first party. It was elicited that he did not make enquiry with the first party with regard to the payment of said amount through his brother and about the fact that there was no entry made in the ledger sheet. He denied the suggestion that the altered date 2-4-2000 in challan is made by his brother himself. He denied the suggestion that his brother did not pay amount to the first party on 31-3-2000 and that amount was retained by his brother himself up till 29-4-2000 without remittance. He denied the suggestion that he himself personally, on 29-4-2000 deposited the said amount with the bank getting the entry made in the passbook on the same day. It was elicited that he was not knowing the first party personally. He denied the suggestion that the complaint at Ex.13 has been made by him at the instance and with the collusion of the bank officials and for the reason that he suspected the hand of the first party in giving complaint to the Income Tax Authority who raided the houses of his relatives and that it was by way of revenge.

10. Statement of MW3 in his affidavit relevant for the purpose is that on 31-3-2000 in the morning hours he visited bank along with the challan/pay in slip filled by his brother (MW2) to remit the sum of Rs. 2300 towards his loan account and having not found any body at the cash counter he met the first party at the business counter and handed over him the said challan and the pass book along with the cash amount and received from him the counter foil duly affixed by the seal under his signature altering the date as 2-4-2000. He made entries in the passbook mentioning the date as 3-4-2000. In his cross examination it was elicited that he did not visit the bank at any time earlier to 31-3-2000 depositing any amount admitting that on 31-3-2000 he could not make the deposit as there was nobody to receive the amount at the cash counter. He denied the suggestion that he altered the date as 2-4-2000 in Ex. M14. He admitted the altered date in Ex. M16 as 29-4-2000 is in his writing and under his signature. It was elicited he did not visit the bank on 29-4-2000 and did not make any complaint with the first party for having paid him the amount on 31-3-2000. He denied the suggestion that he retained the amount with him until 29-4-2000 and gave the same to his brother on that day. He denied the suggestion that the first party made any entry in the pass book and signed the challan as stated by him in his affidavit. In the

last Para of his cross examination he stated that his signature for altering the date as 29-3-2000 on Ex.M16 was made on 31-3-2000, itself.

11. MW4 is said to be the Investigation Officer and in his affidavit he speaks about the communication made by MW2 giving out the facts mentioned therein. His further statement is that on investigation records he found that the first party did not follow the procedure in receiving the amount and kept the amount with his custody. He stated that when the customer contacted the branch on 28-4-2000, the first party told him to come on the next day and on 29-4-2000 the first party gave the challan to the cashier without giving the cash and asked him to affix a cash received seal and had given the cash only after some time. He further stated that during the course of his investigation he recorded the statement of the first party admitting the fact of his receiving the amount from MW3 and never depositing with the bank uptill 29-4-2000.

12. In his cross examination it was elicited that he did not produce any document in the court authorizing him to make investigation in the matter and denied the suggestion that there was no such authorization in his favour to conduct any such investigation and that his report at Ex.M18 is created for the purpose of this case. He denied the suggestion that first party was not entrusted with supervisory duties. He admitted that he did not contact Mr. Sanjay (MW2) and Mr. Vijay Shinde (MW3) nor recorded their statements during the course of his investigation. He admitted that it is on the basis of the first party's statement only he can say that MW2 had come to the bank on 28-4-2000 and he was asked by the first party to come on the following day. He denied the suggestion that no such statement was made by the first party before him. He denied the suggestion that on 29-4-2000 MW2 himself visited the bank and deposited the amount in question and that the first party never received the amount on 31-3-2000 nor kept the same with him upto 29-4-2000 or that he altered the date in the pay in slip as 29-4-2000 and made entry in the pass book on 3-4-2000.

13. MW5, in his affidavit speaks about the Second Charge leveled against the first party to the effect that first party was allowed to withdraw Rs. 30,000 as staff limit fixed according to the bank circulars but he has overdrawn an amount excess to the sanctioned limit by raising a credit card bill for a sum of Rs. 24,250 vide C/C account dated 3-6-2000, another bill of Rs. 8,457 debited on 7-7-2000 thereby balance against the overdrawn coming to Rs. 60,830.21. As on 31-3-2000 the balance was Rs. 58,822.21 which was in excess to his OD limit and thereby he misused the credit card violating the instructions given in the Circular No. 141/1993 and 44/2000. I would like to come to his statement in cross examination while dealing with the second charge leveled against the first party.

14. MW6, is the last witness of the management and in his affidavit he has stated that while he was working as

assistant in the branch along with the first party in the year 2000 (uptill 29-4-2000) he was working in cash counter and at about 10 AM on 31-3-2000 the first party came to him with a pay in slip for amount of Rs. 23,350 with the loan account of Mr. Sanjay and requested him to put the cash received seal on that. He informed the first party that he had affixed the cash received seal and returned it back to him. After about 10 minutes he (first party) brought the same to the counter foil and again requested him to put the seal and he did accordingly and it is after about half an hour that he gave the amount to be credited to the account of MW3. On his cross examination it was elicited that on 29-3-2000 the branch was not open for public transactions. He admitted that as a cashier if he were to find some over writing or alterations either in the date or in the cash amount then he must take the counter signature of the customer before receiving the amount. He stated that MW2 did not come to the bank on that day (28-4-2000). He admitted that the cash received endorsement on Ex.M16 is by him though he did not put his initial or sign his name below it. Similarly on Ex.M14 he put the seal with his initial and signature. He denied the suggestion that there is no signature of the first party on Ex.14 and that MW2 personally came to him and deposited the cash along with the challan and it is after having received the sum, he put the seal on the challan and that he is giving false evidence at the instance of the management.

The first party also filed his affidavit evidence by way of examination chief and denied almost all the allegations made against him in the charge sheet. He denied that he has received any amount from MW3 on 31-3-2000 and kept the same with him upto 29-4-2000 and that he made entry in the pass book of MW2 to the above effect that he altered the date as 2-4-2000 or 29-4-2000 and that he deposited the amount with the bank on 29-4-2000. With regard to his statement before the Investigation Officer he stated that it was obtained from him under duress by the Investigation Officer. On the second charge he stated that his overdraft limit was Rs. 30,000 on the basis of his deposit in National Savings Scheme Certificate of about Rs.40,000 maturity value. The amount in excess of OD limit was noticed by the bank but was not communicated to him. The bank has charged interest on the excess amount in OD account which is the normal practice with any customer exceeding credit card limit. Hence there is no illegality in his transaction. At para 9 of the affidavit he stated that the I.T Officers had come to Tipton Branch and called upon to produce all the documents connected with the Fixed Deposits and he furnished all the information with the consent of the Manager giving rise to suspicion to MW2 and his relatives about him and thereafter, he gave false complaint to take revenge against him. In his cross examination, it was elicited that he was dealing with the Loan Department and Saving Bank Account as on 31-3-2000 and ledger account being prepared by him and it was also prepared by him on 29-4-2000. It was elicited that he was not supposed to

make entries in the pass book of the Loan Account of customers. It was elicited that he was doing duties of Special Assistant whenever Branch Manager wanted so. When he was confronted with the entries in Ex.M26 dated 31-3-2000 he admitted to have made them in his writing. He also admitted entries in his writing dated 29-4-2000. It was elicited that MW4 and he alone were present in the bank when he gave his statement under force and that he did not report this fact to the higher officers. He denied the suggestion that he altered the date as 29-4-2000 in Ex.M16 and made the entries dated 3-4-2000 & 29-4-2000 in the pass book at Ex.M15. He denied the suggestion that he received the amount from MW2 on 31-3-2000 and kept with himself until 29-4-2000.

16. Learned counsel for the management Shri HSH filed his written arguments, wherein he relied upon the statements of MW2 to 4 and MW6 and laid stress upon the fact that the first party himself admitted the misconduct committed by him by giving his statement to the Investigation Officer, MW4 during the course of Investigation. He contended that when the first party was in charge of Loan Department on 29-4-2000 and admittedly made the entry in the loan ledger of the customer, it is quite possible for him to have made entry in the pass book at Ex.M15. He submitted that if the customer himself were to make the payment on 29-4-2000, itself, there would not have been two different dates, one in Ex.14 and another in Ex.M16 and that insertion of figure '9' is clearly distinguishable from that of different handwriting. He contended that 31-3-2000 was a business transaction day as could be read from the register at Ex.M16 and therefore, contention of the first party that it was not a business transaction day is false. Therefore, learned counsel submitted that Charge No.1 has been proved against the first party by sufficient and legal evidence and the minor discrepancies in the evidence of MW3 are not to be read in isolation. He also contended that Charge No. 2 is also proved on the basis of statement of MW5 and the document at Ex. M20 reflecting the overdrawing made by the first party beyond the permissible limit of Rs.30,000.

17. Learned counsel Shri Muralidhar for the first party on the other hand argued that the various allegations made in the charge sheet with regard to the payment of Rs. 2300 by MW3 into the hand of the first party and obtaining the counter foil from him and that the first party altered the date as 2-4-2000 from 31-3-2000 while passing the counter foil and the fact that it is the first party who deposited the amount of Rs. 2300 with bank on 29-4-2000 have not at all been proved in the oral as well as documentary evidence produced by the management. Learned counsel took the court through the statements of MW2 to MW4 and MW6 in support of his contention that charges against the first party have not been proved and that in their evidence the defence put forth by the first party itself is established. If we take the charge sheet allegations one by

one with the reference to the evidence brought on record we find very much substance in the arguments advanced for the first party. In this case as noted above, the management examined 4 witnesses as MW2 to 4 & MW6 in order to prove the first charge leveled against the first party and relied upon mainly 5 documents to connect the first party with the guilt at Ex. M13 to M16 and M26. The statement of MW2 who is said to be the complainant in this case is nothing but an hearsay evidence. He files his complaint on the basis of the statement of MW3 through whom he is said to have sent the amount in question to be deposited with the bank and it is on the basis of his statement alone he comes to say that MW3 had paid amount into the hands of the first party and had obtained the counter foil initialed by him. Therefore, the whole recitals of the complaint at Ex.M13 and the statement of MW2 before this tribunal is on the basis of the information submitted by MW3 to MW2 about the remittance of the amount in question with the bank so to say into the hands of the first party. Therefore, reliance cannot be placed on his evidence unless corroborated by other evidence.

18. Now, coming to the statement of MW3 to speak to the allegation that he paid amount into the hands of the first party and obtained the counter foil and that the date in the counter foil was altered to 2-4-2000 from 31-3-2000. It was well argued for the first party that it does not inspire the confidence in the mind of the court, if, scrutinized closely. MW6 who alleged to have received the amount of Rs.2300 from the first party on 29-4-2000, in his cross examination in no uncertain terms admitted that on Ex.M14 he has put the seal but without his initial and signature. Therefore, it is in the face of this statement of MW6, it is very difficult to act upon the statement of MW3 when he has stated that the first party gave him this counter foil at Ex. M14 by putting the seal under his initial. From the statement of MW6 in his cross examination what can be gathered is that it is on 29-4-2000, he put the cash received seal not only on the challan at Ex.M16 but also on the counter foil at Ex.M14. If this statement of MW6 is to be believed then certainly one must discard the statement of MW3 that he after having paid a sum of Rs. 2300 into the hands of the first party had received Ex.M14 from him and it is the first party who had put the cash received seal on Ex.M14. Now, coming to the allegation that MW3 had paid a sum of Rs.2300 in the hands of the first party and collected Ex.M14 as argued for the first party, his story about the payment is improbable and unbelievable for the simple reason that MW3 in his own words did not visit the branch in question earlier to 31-3-2000, if we go by his above said statement, then it is hard to believe that he could have handed over the amount in question to the first party to whom he never knew earlier to 31-3-2000 as he never visited the bank earlier to the said date. It is also not in dispute and has come in the evidence of the management much less in the statement of MW4 that 31-3-2000 was not

a business transaction day. It is also not in dispute that on the above said date the first party was not working as a cash clerk. Therefore, when the bank was not at all doing business transaction and first party was not working as a Cash Clerk then it is highly improbable to believe that MW3 might have given the amount into the hands of the first party that too not knowing him personally. Moreover, the case of the management that MW3 visited the bank after business transactions were over and paid the amount in question into the hands of the workman has been falsified by the very statement of MW3 in his affidavit evidence, itself, wherein, he stated that he visited the bank at 10.30 AM and paid the amount to the workman. If one is to believe the case of management as canvassed above, then one must discard the statement of MW3 & vice versa. Now coming to the statement of MW3 that while receiving the amount the first party altered the date as 2-4-2000 from 31-3-2000. If that were to be the case then it was quite natural on his part or atleast on the part of MW2 to have visited the bank on 2-4-2000 so as to ascertain as to whether the amount received by the first party really was deposited with the bank or not. It is in the evidence that upto 29-4-2000 neither MW3 tried to ascertain the payment with the bank nor MW2 took pains to visit the bank to find out about the amount he paid into the hands of MW3 actually was credited with his loan account or not. Therefore, this unnatural conduct on the part of MW2 & 3 must falsify the story put forth by the management that the first party passed counter foil at Ex.M14 by altering the date as 2-4-2000 from 31-3-2000. This part of the story also must fall to the ground under its own weight in view of the evidence brought on record that MW2 did not visit the bank at all between 31-3-2000 and 29-4-2000 and that Ex.M14 was with MW3 all along between the above said period. Further more as per the case of the management the challan at Ex.M16 was also bearing the original date as 31-3-2000 and was altered by the first party as 2-4-2000. If we look into Ex.16 it is very difficult to appreciate the case of the management that original date 31-3-2000 was altered to 2-4-2000. The date said to have been altered infact is 29-4-2000. This fact in no uncertain words has been admitted by MW3 himself in his cross examination. He admits as noted above, in his cross examination that the altered date in Ex.M16 as 29-4-2000 is in his writing and bearing his signature. Now therefore, the allegations made in the charge sheet that the first party having received the amount passed the counter foil at Ex.M14 putting the cash received seal under his initial, altered the date as 2-4-2000 from 31-3-2000 and then kept the amount with him upto 29-4-2000 instead of being established in the statements of MW2 to 4 & MW6 has been falsified in the very evidence brought on record, already, discussed above. The allegation that first party made an advance entry in the pass book for the date 3-4-2000 showing the credit of Rs. 2300 while passing the counter foil again has not been established. First of all it has come in the evidence that the

pass book was with MW3 all along from 31-3-2000 to 29-4-2000. Secondly, if we look into the very passbook, Ex.M15, we never find any entry dated 2-4-2000. The entry infact is for 29-4-2000. It can never be said that date 29-4-2000 found in the passbook has been altered from the date 2-4-2000 if seen by naked eye. This entry dated 29-4-2000 against the cash credit of Rs. 23000 appears to be made by one and the same person who made another entry dated 29-4-2000 for having received cash of Rs. 9612 and he cannot be a person other than MW6 who was working as Cash Clerk on the above said date.

19. Statement of MW4 speaking to the fact that the first party himself made the admission of the guilt before him by giving his statement as rightly argued for the first party cannot be acted upon safely first of all such a statement will not be having any evidentiary value in the eye of law. It is as good as a statement made before the police during the investigation of any crime. That apart, MW4 did not produce any document to show that he was authorized to make investigation in the matter. The fact that he really did investigation into the charges against the first party further comes into doubts when he admits in cross examination that he did not contact or did not meet MW2 and MW3 nor recorded their statements during the course of investigation. The whole of his investigation was based upon the complaint said to have been made by MW2 and the documents, Ex.M15 & M16, that too on the basis of information furnished by MW3 and in my opinion these were the only two important and competent witnesses to say anything about the incident in question rather the payment of the amount into the hands of the first party. It is not understandable as to what investigation he did when he did not contact MW2 & 3 and did not look into the main documents at Ex.M15, Pass Book & Ex.M16, Counter Foil, itself, the basis for the charges levelled against the first party. Very strangely, MW4 took no pains to atleast contact them and question them about the above said complaint and Ex.M15&16 much less recording their statements. It is here one must attach weight to the arguments advanced for the first party that there was no investigation as such done by MW4 into the charges leveled against the first party and his report at Ex. M218 is created for the purpose of this case.

20. As per the charge sheet, the next allegation is that on 28-4 -2000, the party (MW2) came to the branch and expressed his intention to clear the balance existing in the LMV account and the first party advised him to come next day i.e. on 29-4-2000 in order to conceal his misdeed of not crediting the amount on 3-4-2000. These allegations have again been negatived and proved to be false in the light of the statement of MW2 in his affidavit itself. At Para 3 of his affidavit he has stated that on 29-4-2000 he visited the branch in order to close his loan account and it is at that time he came to know that the amount he had sent through his brother was not deposited with the bank. In

his cross examination also he admitted that he did not visit the bank to close his above loan account in between 31-3-2000 and 29-4-2000. Therefore, the allegation that MW3 came to the bank on 28-4-2000 and was asked by the first party to come on next day i.e. 29-4-2000 must fall to the ground under its own weight.

21. Now, comes the next allegation to say that it is on 29-4-2000 the first party advised the cashier (MW6) to release the slip with cash received stamp without making payment immediately but remitted the amount subsequently and that in doing so the date on the pay in slip i.e. M16 was altered by the first party. Statement of MW6, the Cashier is very important on this point. In his affidavit he says that first party came to him with a pay in slip of LMV account belonging to MW2 for remitting Rs. 2300 with a request to affix cash received seal and he affixed the seal immediately and it is after about 10 minutes he brought the connected counter foil of the pay in slip once again to put the seal and he obliged him and it is after about half an hour, the first party gave the amount. This statement of MW6 in his examination chief itself as argued for the first party is liable to be rejected on its face itself being improbable and unbelievable. It can never be expected of a cashier like MW6 to have obliged the first party by putting 'cash received seal' over pay in slip/ counter foil without actually receiving the amount. He once again puts 'cash received seal' even on the counter foil once again at the request of the first party that too without payment and it is after about half an hour he is said to have received the amount from the first party. It is very difficult to believe such a statement of MW6 saying that he put seals on those challan and counter foils only because first party happened to be staff member even without receiving the amount. Secondly, in his cross examination he admits that as a cashier he were to find some over writing or alterations in the date or in the cash amount then he must take the counter signature of the customer before receiving the amount. In this case counter foil/challan, Ex.M16 is said to have been bearing the signature of MW3 and not of MW2. Then it is not understandable as to how MW6 could put the cash received seal on Ex.M16 that too without receiving payment and also without calling for the depositor after having noted that the original date was altered when in his own words he says that the cashier has to take the Counter signature of the customer before receiving the amount whenever there is some alteration found in the date or in the cash mentioned challan. Further more as noted above, the date 29-4-2000 has been put on Ex.M16 by MW3 himself and was not altered by the first party from 31-3-2000. Therefore, as argued for the first party the evidence produced by the management in order to establish the allegations made in the charge sheet is neither sufficient, legal or satisfactory much less inspiring the confidence in the mind of the court. One more point to be noted is the fact that MW2 did not ask the bank authorities not to

charge interest upon the sum of Rs.2300 as a late payment in view of the fact he had already paid the amount into his hands of the first party. In his cross examination he admitted that he did not ask the bank not to charge interest for the amount of Rs.2300 for the period between 31-3-2000 and 29-4-2000 on the ground that he had already deposited the above said amount. This statement of MW2 lends support to the defence contention that the amount in question was all along with MW3 i.e. from 31-3-2000 to 29-4-2000 and it is on 29-4-2000 only MW2 himself came to the bank and deposited the same personally. In the result, and for the reasons foregoing one must accept the arguments advanced for the first party that the evidence which is brought on record by the management to establish the allegations and charges leveled in the charge sheet is neither sufficient nor legal much less satisfactory from the over all reading of the evidence what appears is that the first party has played no role either in receiving the amount, passing the counterfoil at Ex.M14 or depositing the said amount with the bank on 29-4-2000 or that he altered the date as 2-4-2000 or 29-4-2000 from 31-3-2000 while passing the counter foil or while depositing the amount with the bank. The defence taken by the first party that a false complaint has been filed by MW2 suspecting his hand into the information supplied to the IT officials appears to be not without any basis. The averments in the affidavit of the first party on this point are not at all countered during the course of his cross examination by the management. Therefore, the fact that IT Officials sought information about the fixed deposits of the customers from the first party and he furnished such information to them with the consent of the Manager has not been disputed. The fact that Income Tax Department Officers raided the houses of the relatives of MW2 has been admitted by MW2 himself in his cross examination. Therefore, one cannot brush aside lightly the defence taken by the first party that MW2 suspecting the hand of the first party in furnishing certain information to the IT officers resulting into the raids of the houses of his relatives filed the complaint against him by way of revenge. Therefore, in the light of the above, this court has absolutely no hesitation in its mind to come to the conclusion that the first charge leveled against the first party remains to be proved beyond any reasonable doubt /beyond any shadow of doubt.

22. Now, coming to the Second Charge against the first party. It is alleged that he was in the habit of using credit card indiscriminately without sufficient balance in his OD account maintained at the branch as a result of which the said credit card account showing excess overdrawings of Rs.28, 822 which is beyond the sanctioned limit of Rs. 30, 000 as on 31-7-2000 and that he used the said card for commercial transaction as against the purpose for which it was issued and thereby violated the instructions contained in HO Circular 14/93, 209/93, 83/96 and 74/97 and caused financial loss to the bank. As

noted above, in order to prove this charge the management examined MW5 and he gave his affidavit statement in line with the charge sheet allegations. During his cross examination it was elicited that the first party deposited National Savings Certificate of maturity value of Rs. 60,000 for the purpose of over draft. It was elicited that to the general customers the credit limit may be up to Rs. 50,000. It was elicited in case there is no amount available in the OD or SB Accounts the bills towards purchases amount will be charged with penal interest and letter to that effect will be issued to the credit card holder. He admitted that the bank has not issued any letter to the first party as soon as he crossed the OD limits of Rs. 30,000, and the bank has charged an interest amount over the amount exceeding the OD limits of the first party and the first party credited the entire amount exceeding the limits as soon as he was brought to the notice of this fact. Statement of the first party at Para 8 of his affidavit on this point is that his over draft limit was fixed at Rs. 30,000 on the basis of his depositing National Savings Scheme Certificates of about Rs. 40,000 maturity value. He was not communicated by the bank about the fact of OD Limit exceeding and that the bank has charged interest and penal interest on the excess amount which is the normal practice with any customer exceeding the credit limit. There has been no cross examination to the first party on his above statement in the affidavit except to say that it was a false statement. Therefore, keeping in view the statement of MW5 in his cross examination as well as the above said statement of first in his examination chief, learned counsel for the first party submitted that there has been absolutely no violation or contravention of any of the aforesaid circular instructions by the first party in using his credit card. As seen above, the credit card in favour of the first party has been issued taking deposit of NSC of maturity value of Rs. 40,000 Rs. 60,000 putting the limit of Rs. 30,000. It is in the evidence of MW5 as well as the first party that in case of use of the credit card exceeding the limit, the management bank will be charging simple interest as well as penal interest and in the instant case undisputedly, the management has charged simple as well as penal interest over and above, the amount exceeding the limit. It has also come in the evidence of MW5 as soon as the first party was brought to the notice of the excess amount drawn he had deposited the entire excess amount. It is not denied by the management that the first party was not brought to the notice of withdrawals exceeding the limit at any point of time and as soon as he was told about it he had deposited the amount and that too was charged with simple and penal interest over the amount exceeding the limit which is the practice in the cases of general customers. Therefore, it was well argued for the first party that the management issued the credit card in favour of the first party not as its employee but on the footing of general customer and therefore, when he was treated as a general customer being charged with simple and penal interest over and above the amount exceeding the limit by no stretch of imagination it

can be said that he is guilty of the violations of the instructions contained in the above said circulars. He was treated as a general customer while issuing the credit card against the NSC and was charged with the interest over the exceeding amount on par with the general customer. He was not communicated about the fact of overdrafts by the bank and as soon as he was brought to the notice of this fact he deposited the entire amount exceeding the limit. Therefore, it cannot be said that the first party violated the aforesaid circular instructions or used the credit card against the purpose for which it was issued. The allegation that he used the card for commercial purpose has not at all been established much less spoken to by MW5 the only witness examined on the point. In the result, I must record finding that Second Charge against the first party is since to be established.

23. As both the charges of misconduct leveled against the first party have remained to be substantiated, then it goes without saying that findings of the enquiry officer holding him guilty of the charges were bad in law and in the result the dismissal order passed against the first party based on those findings is liable to be set aside as illegal and void ab initio. The resultant corollary would be the reinstatement of the first party into the services of the management with all consequential benefits.

24. Now, Coming to the relief of the back wages. The first party in his affidavit at Para 10 has stated that he has not been gainfully employed anywhere and has been surviving with the amount he is receiving as Interim Relief from the bank. There is absolutely no cross examination on behalf of the management on this point. There is also no evidence produced by the management of speak to the fact that the first party has been gainfully employed when was away from the service of the management. In the result, he must get full back wages from the date of his dismissal till the date of his reinstatement minus the amount he received from the bank by way of interim relief, with continuity of service and other attended benefits.

25. The ruling cited by the learned counsel for the management reported in 1995 I LLJ page 233- Bank of India Vs. Padmabhan & Others will be applicable if the charge of misconduct of misappropriation of the amount leveled against the first party has been established and not otherwise. Hence the following award :

AWARD

The management is directed to reinstate the first party into its services with full back wages from the date of dismissal (minus the amount already paid to him by way of interim relief) till the date of his reinstatement with continuity of service and all other consequential benefits. No costs.

(Dictated to PA transcribed by here corrected and signed by me on 21st March 2007)

A.R. SIDDIQUI, Presiding Officer

नई दिल्ली, 30 मार्च, 2007

का.आ. 1126.—ऑटोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑटोगिक विवाद में केन्द्रीय सरकार औटोगिक अधिकरण/श्रम न्यायालय बैंगलोर के पंचाट (संदर्भ संख्या 127/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/123/95-आई.आर(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1126.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 127/97) of the Central Government Industrial Tribunal cum-labour Court Bangalore as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 30-3-2007.

[No. L-12012/123/95-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 15th March, 2007

PRESENT

Shri A. R. Siddiqui,
Pres'ing Officer

C. R. No. 127/1997

I Party

The Vice President,
Canara Bank Staff Union,
220, 2nd Floor,
Cubbonpet Road,
Bangalore-560 002

II Party

The General Manager,
Canara Bank, H. O.,
J. C. Road, Bangalore

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/123/95-IR(B-II) dated 26th March, 1996 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Canara Bank, Bangalore in imposing the punishment of stoppage of two increments with cumulative effect on Shri N. Siddara, Clerk and recovering the LFC advance drawn by him is legal and justified. If not, what relief is the said workman entitled to?"

2. A charge sheet dated 13-12-1989 came to be issued to the first party by the management in the following terms;

CHARGE SHEET

You are working at our Bhalki branch since 20-5-1985. You had been sanctioned privilege leave from 11-10-1988 to 28-10-1988 and you were permitted to avail LFC during that period for the period ending 14-6-1992.

You had submitted a LFC bill dated 2-11-1988 for Rs. 12,197.25 and a receipt No. 783 dated 29-10-1988 issued by M/s. South India Travels, Hyderabad for Rs. 12,150/- and 18 bus tickets for Rs. 47.25 in support of your claim. You had claimed reimbursement for yourself, wife father, mother, 3 sisters, one brother, son and daughter.

Further you had declared in the above bill that you had visited Bidar, Sholapur, Bombay, Indore, Ujjain, Arga, Chandigarh, Jammu, Delhi, Gwalior, Nagpur, along with your family members from 19-10-1988 to 28-10-1988 by contract Bus No. AET 2233 of M/s. South India Travels travelling a distance of 4723 Kms. You have also declared in F. 656 dated 2-11-1988 that Shri Sheikh Ismail is the owner of the vehicle. During investigation, you have asserted that what you have declared in the LFC bill as correct.

The investigation has revealed that the vehicle No. AET 2233 was under contract to State Bank of India, Institute of Rural Development, Gachibouli, Lingampet, Hyderabad, since 22-9-1988. It was confirmed by State Bank of India, Institute of Rural Development, that the vehicle AET 2233 was plying with the Institute during the period 19-10-1988 to 28-10-1988, contrary to your declaration that you have travelled in the above vehicle from 19-10-1988 to 28-10-1988.

From the above, it is clear that you had not undertaken the journey to the places mentioned in your bill.

Thus, it is clear that you had submitted a false declaration/ False LFC bill/misutilised the LFC facility extended to employees.

By your above be action in submitting false declaration/false LFC bill you have committed gross misconduct within the meaning of Chapter XI Regulation 3 (a) of Canara Bank Service Code.

Your action being prejudicial to the interests of the bank, you have also committed gross misconduct within the meaning of Chapter XI Regulation 3 (m) of Canara Bank Service Code".

3. His reply to the charge sheet dated 26-12-1989 not being found satisfactory by the Disciplinary Authority, a Domestic Enquiry was ordered against him and based on the findings of the enquiry officer holding him guilty of the charges, opportunity of personal hearing was given to him

and thereupon, the proposed punishment of stoppage of two increments with cumulative effect was confirmed by the Disciplinary Authority vide order dated 20-8-1990. His appeal against the said order came to be dismissed by the Appellate Authority vide order dated 14-1-1991.

4. The first party through the Canara Bank staff union represented by its Vice President raised the dispute before the Conciliation Officer concerned resulting into the failure report and thereupon the Govt. of India referred the dispute to this tribunal under the aforesaid reference schedule.

5. The first party by his Claim Statement challenged the enquiry proceedings as opposed to the principles of natural justice, the findings of the enquiry officer as perverse and the impugned punishment order passed against him as unjust and illegal.

6. The management by its Counter Statement however, asserted and maintained that the DE conducted against the first party by it was fair and proper and in accordance with the principles of natural justice, that the findings of the enquiry officer were based upon sufficient and legal evidence supported by valid and cogent reasonings of the enquiry officer and that the order of punishment was just and legal under the facts and circumstances of the case.

7. Based on the respective contentions of the parties with regard to the validity and fairness or otherwise of the enquiry proceedings, this question was taken up by my learned Predecessor as preliminary issue and after due trial of the said issue he recorded a finding to the effect that DE conducted against the first party by the Second Party is not fair and proper. Thereupon, the management was afforded an opportunity to substantiate the charges of misconduct levelled against the first party by leading fresh evidence.

8. In order to justify its action against the party and to prove the charges of misconduct levelled against him, the management examined three witnesses as MW2 to 4 and in the statement of MW2 got marked documents at Ex. M11 to M23. Ex. M 24 was marked in statement of MW4.

9. The first party examined himself as WW1 and was cross examined on behalf of the management. The sum and substance of the statement of MW2 in examination chief who is said have investigated into the charges levelled against the first party is that as per the investigation report at Ex. M11, he interrogated various persons and verified certain documents. He interrogated one Mr. K. V. Rao and obtained a letter dated 11-8-1989 from him at Ex. M 12. It was in respect of the letter dated 29-10-1989 issued by the said Mr. K. V. Rao in favour of the first party which was filed along with the bill claiming the reimbursement but the first party. It was signed by Shri K. V. Rao for South India Travels marked at Ex. M13. He interrogated the first party and obtained his statement at Ex. M14. Then he is said to

have visited the RTO office, Malakpet, Hyderabad to find that vehicle bearing No. AET 2233 found mentioned in the permit of the vehicle (Ex. M15) submitted by the first party along with his bill belonged to one Mr. Ismail. Then he visited the office of said Mr. Ismail and obtained the visiting card at Ex. M16 from him and during his interrogation with Ismail he came to know that Mr. Ismail did not give the vehicle in the service of said Mr. K. V. Rao of South India Travels and that it was never taken on tour from Hyderabad to Jammu and Kashmir during the permit period from 18-10-1988 to 9-11-1988 and that the vehicle infact was given on lease to the State Bank of India, Institute of Rural Development, Kachibouli, Hyderabad since 21-9-1988 onwards. He stated that he could not record the statement of Ismail as he refused to give in writing. Then he went to the Rural Development, Institute of State Bank of India and met the Administrative Officer there, getting the information confirmed that vehicle was with the said Institute during the relevant period. On the asking of the Administrative Officer a letter from their bank to furnish the information in writing he (MW2) got a letter from his bank at Ex. M18 written to the said Institute and the Administrative Officer furnished the above said information by his letter at Ex. M17. Then he spoke to the bill submitted by the first party at Ex. M19, Bus tickets 18 in numbers for having travelled from Bhalki to Bidar at Ex. M20, the annexures to the bill at Ex. M21, the receipt submitted by the first party for the payment he made for the journey undertaken at Ex. M22, the covering letter forwarding Ex. M17 at Ex. 23 and lastly, he stated that as per the oral statement of the RTO if any vehicle crossed the borders of Andhra Pradesh and went to Jammu and Kashmir, it must bear the stamping on the reverse of the permit at every state crossed by the vehicle.

10. During the course of cross examination MW2 admitted that he has not recorded the statements of said Mr. K. V. Rao and Mr. Ismail nor recorded the statement of said RTO or the statement of any official working at the said Institute of Rural Development, State Bank of India. He denied the suggestion that he did not meet those persons at all and that said vehicle was not with the said institute during the relevant period and that he obtained the letter at Ex. M17 from the said Institute as per his convenience to suit his purpose. He admitted that the above said information given by him is based on the statement of Administrative Officer of the said Institute. He was unable to say that the first party was active member of the union of his Bank employees. He denied the suggestion that he prepared the report at Ex. M11 under the orders of his Divisional Manager without conducting any investigation into the matter. He stated that he did not produce the visiting card at Ex. M16 during his deposition in the enquiry. He was unable to say if it is left to the discretion of the RTO officials to put the stamp or not at every passing stage in any State and that it is for that reason permit at Ex. M15 did not bear any stamping by the RTO officials.

11. Statement of MW 3 is for the limited purpose to say that on the request of MW 2 he addressed a letter to the said Institute at Ex. M18 to furnish the information with regard to the above said vehicle being hired by it and thereafter received the letter from the said Institute at Ex. M17 which he forwarded, later, to MW 2 as per covering letter at Ex. M23.

12. In his cross examination it was elicited that there were oral instructions to him by his superiors and not in writing to assist MW 2 in getting the said letter and that letter at Ex. M18 is signed by his superior AGM and denied the suggestion that it did not bear his initial as well. He admitted that Ex. M17 was received by AGM, Canara Bank, Circle Office, Hyderabad and that he did not visit the said institute to verify the facts personally. He denied the suggestion that AGM has managed to get Ex. M17 from the Institute putting his influence for the purpose of this case.

13. MW4 is to speak to the fact that the letter at Ex. M24 was written by the then Manager, Bhalki Branch to Deputy General Manager, Staff Section, Circle Office, Bangalore. There was no cross examination to this witness.

14. As against this first party's statement relevant for the purpose in his examination chief is that he availed the LFC benefits for taking a journey from Bidar to Jammu and Kashmir for a period of 10 days and travelled through out the places Sholapur, Bombay, Indore, Ujjain, Agra, Chandigarh and reached Jammu and Kashmir in the last, through Mini Bus No. AET 2233 with his family members and made night halts at the above said places including Delhi. He then referred to the Bus tickets at Ex. M20 for having travelled from Balki to Bidar, his claim statement at Ex. M19, the receipt he produced in support of his claim at Ex. M22, his statement before the Investigation Officer is at Ex. M14 and the certificate issued by the South Indian Travels in his favour for having undertaken the journey at Ex. M13. In his cross examination it was elicited that he got sanctioned privilege leave from 11-10-1988 to 28-10-1988 and took the permission to avail the benefit of LFC during the said period taking advance amount of Rs. 11,950 and also got encashed a sum of Rs. 2,158 against the privilege leave. It was elicited that he engaged Mini bus from Bidar to Sholapur, Pune, Mumbai, Indore, Ujjain, Gwalior and then to Jammu for his journey along with members of his family. He also went to Chandigarh and Nagpur and was unable to say his journey crossed how many states, might be about six states. It was elicited that the permit at Ex. M15 which is the interstate permit given by the RTO, Hyderabad was obtained by said K. V. Rao for South India Travels, Hyderabad. It was elicited that K. V. Rao is the proprietor of South India Travels, Hyderabad. He denied the suggestion that the above said vehicle was infact running under contract for State Bank of India, Institute of Rural Development, Hyderabad as per Ex. M17. The first party also examined one witness by name Shri Ashok Kumar as WW2 and his statement in examination chief is to the effect

that during the year 1986 to 1996 he was in defence service at Jammu and Kashmir and was residing in a Government quarter. He stated that on 24-10-1988 the first party visited Jammu and stayed in his house along with his family, viz. parents, brother, three sisters, son and daughter for a single night. They came to his house by 3 PM and left the house next day morning at 7 AM. They came in a Mini bus bearing No. AET 2233 for the purpose of sight seeing. Then referred his letter at Ex. W1 addressed to the first party and copy marked to Sr. Manager.

15. It was elicited in his cross examination that he was visiting Canara Bank, Balki branch where the first party was working. He denied the suggestion the first party and his family never stayed in his house nor it was possible for him to have accommodated them in his said house on 24-10-1988 which house consisted of one hall, one bedroom and kitchen only.

16. Learned counsel for the management Shri Venkatesh vehemently argued that the charge of misconduct leveled against the first party that he made a false claim in availing LFC facility has been very much proved in the oral testimony of MW 2 & 3 and by way of documentary evidence at Ex. M12, 13, 14, 15 and M22. He contended that the evidence of the first party being self serving cannot be relied upon and at the same time evidence of WW2 is not believable when he says that first party stayed at his home at Jammu & Kashmir on 24-10-1988 as he could not have accommodated about 10 members of the first party family in such a small house. He contended that the permit at Ex. M15 does not bear any stamping by RTO at any state crossed by the vehicle in question though it appears to have crossed more than six states before reaching Jammu & Kashmir. He contended that there is no proof made available by the first party of his making night halts at various places. He submitted that the vehicle in which the first party is alleged to have travelled, infact, belonged to one Mr. Ismail as per the permit at Ex. M15 and therefore, the question of it being hired by said Mr. K. V. Rao who issued the certificate and receipt testifying to the journey undertaken by the first party did not arise. He contended that as per the letter at Ex. M17 obtained from the Administrative Officer of the above said Institute will make it abundantly clear that the vehicle concerned was in their service during the relevant period and this fact was also confirmed by Mr. Ismail during the course of his interrogation by MW2.

17. Whereas, learned counsel for the first party Shri KV argued that the charge of misconduct levelled against the first party as read from the charge sheet is, mainly, with the allegation that during the investigation done it was revealed that the vehicle in question was under contract to State Bank of India, Institute of Rural Development, Hyderabad since 22-9-1988 and this fact has been confirmed by the said institute and therefore, the declaration given by the first party that he travelled or

undertook the journey by the said vehicle in availing LFC was false and thereby he committed the misconduct alleged. He submitted that this particular allegation made in the charge sheet remains to be substantiated by the management's evidence and that oral testimony of MW2 and MW3 and the documentary evidence produced by it to prove the said allegation is not worth credence, particularly, in the face of the documents produced by the first party in support of his claim of reimbursement for having undertaken the journey. Learned counsel submitted that the very investigation done by MW2 is surrounded under mystery as undisputedly in his statement in cross examination, he recorded no statement of said Ismail & K.V Rao, Administrative Officer or any other officials of the said Institute and therefore his statement saying that Ismail furnished him the information in question by giving his visiting card at Ex.M16 and thereupon he visited the said institute can never be believed. Coming to the statement of MW3 and the letter at Ex.M 17 based on which the charge sheet in question was issued, learned counsel submitted that it was obtained by the AGM, Management bank to suit its convenience for the purpose of this case by putting influence on the above said Administrative Officer of the said institute. He submitted that no credence can be attached to the said letter also for the reason that it was not obtained by proper channel namely, through the Balki branch where the first party was working at the time of alleged misconduct. He contended that the evidentiary value of the said letter is also lost in the face of the very letter at Ex.M 12 given by the said Mr. K.V. Rao to MW2 as per the Ex.M 12, vehicle in question was admittedly given to the first party between 19-10-1988 and 28-10-1988.

18. On going through the records I find substance in his arguments. First of all as argued for the first party the oral testimony of MW2 that he investigated into the matter and interrogated above said Mr. Ismail, Mr. K.V. Rao and the Administrator of the said institute cannot be acted upon without a pinch of salt. Undisputedly, he did not record their statements during the course of interrogation and therefore, it cannot be believed that he ever made any interrogation with those persons and it is on the basis of the information submitted by them he visited the said institute or came to know that vehicle in question was in the service of the said Institute.

19. Now, coming to the letter at Ex.M 17 and the statement of MW3. It was well argued for the first party that first of all it was not obtained by the AGM concerned through proper channel. If at all MW2 wanted the assistance of any bank officer to write a letter to the said institute seeking information about the matter in question, the best and competent person would have been the Manager, Balki branch and not MW3 who was working at Circle Office, Hyderabad. Secondly, though MW3 says that he wrote letter at Ex.M18 to the said Institute but the perusal of the said letter will disclose that it was the letter

signed by the Assistant General Manager. MW3 claims to have initialled the said letter but this fact has rightly been challenged by the first party in his cross examination. Moreover, the letter at Ex. M17 infact was not received by MW3 but by the AGM, Circle Office, Hyderabad. Therefore, statement of MW3 that he wrote Ex.M18 and in response to that he received Ex.M17 itself comes in doubts. Even otherwise, the contents of the letter at Ex.M17 are not very much clear to speak to the fact that the vehicle in question was in the service of the said institute between 19-10-1988 and 28-10-1988 except to say the vehicle was plying with them during the dates mentioned in the letter. There are no particulars furnished with regard to the actual dates and period during which the vehicle in question was with the said institute. Moreover this letter said to have been issued by the Administrative Officer of the said Institute and therefore, as argued for the first party it cannot be said that he was the authority competent would have been the officer heading the said institute. Further more said Administrative Officer neither gave the statement before MW2 nor was produced before this tribunal to testify to the above said letter. Therefore, much evidentially value cannot be attached to the above said letter and since the charge sheet against the first party is solely based upon the above said letter, there cannot be any hesitation in the mind of this tribunal to come to the conclusion that charge of misconduct levelled against the first party remains to be substantiated by the said letter or by any other evidence. As argued for the first party the documents produced by the first party in support of his claim at Ex.M13 and M22 were the sufficient and cogent evidence to speak to the fact that he undertook journey by the aforesaid vehicle. This argument gets support from the very letter at Ex. M 12 said to have been obtained by MW2 from Mr. K.V. Rao. If we read Ex.M12 coupled with Ex.M13 and M22 it can be very well established that the vehicle in question though belonged to one Mr. Ismail was hired to the above said South India Travels headed by the Manager, K.V. Rao. When the management itself could rely and produce before this tribunal the aforesaid letter at Ex.M12 written by said Manager, Mr. K. V. Rao and obtained by MW2 during the course of investigation, then the entire case of the management to say that the vehicle was not with the said Mr. K. V. Rao but with the said Institute must fall to the ground under its own weight. This letter at Ex.M12 relied upon by the management speaking to the fact that vehicle in question was with the first party from 19-10-1988 to 28-10-1988 would lend support to the case of the first party that the vehicle in question was with South India Travels and it is the Manager of the said travels namely, Shri K.V. Rao who issued the payment receipt at Ex.M22 and the journey certificate at Ex.M13. One cannot discard the evidence: at Ex.M13 & M22 produced by the first party in support of his claim of reimbursement in the face of the very letter at Ex.M12 which infact has been relied upon by the management. The fact that the vehicle in question was on hire with; South India

travels is again very much corroborated by the very inter-state permit at Ex.M15 once again produced by the management before this tribunal. As per this permit the owner is Mr. 1smail and it has been issued in favour of said K.V. Rao for the very vehicle in question.

20. The contention of the learned counsel for the management that this permit should have got stamping at every state it crossed during the course of journey, in my opinion, is no such significance. If the RTO Officials concerned do not come across the vehicle and do not put their stamp or seal over the permit that does not mean to that the vehicle pass through the particular state. The contention of the management that the statement of WW2 that first party stayed in his house on 24-10-1988 is not believable because of shortage of housing accommodation also is not worth considering. Only because the house rather the Govt. quarter in the occupation of WW2 was not having much accommodation capacity, it cannot be said that he did not accommodate the first party and his family in his house that too for a single night. Therefore, the oral and documentary evidence produced by the first party is much more reliable, cogent and satisfactory than the evidence produced by the management to establish the charges leveled against him. As noted above, the entire allegations of misconduct against the first party for not undertaking the journey through the said vehicle were based upon the letter at Ex.M17 which letter itself as noted above, is not worth credence and cannot be attached any weight or evidentially value in the light of the very letter at Ex.M12 produced by the management testifying to the effect that the vehicle in question infact was on hire to South India Travels and was in the service of the first party during the relevant period. In the result, for the reasons foregoing, I must conclude to say that charge of misconduct leveled against the first party fails to be substantiated and therefore, the impugned punishment order passed against him is held to be illegal and void ab initio. Hence the following Award:

AWARD

The reference stands allowed. The impugned punishment order of stopping of two annual increments with cumulative effects on first party is hereby set aside. The Management shall reimburse to the first party the loss he suffered on account of stoppage of the aforesaid two increments from the date of impugned punishment order till the date of this award and shall release those increments hereinafter. No costs.

(Dictated to PA transcribed by her corrected and signed by me on 15th March, 2007)

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 30 मार्च, 2007

का.आ. 1127.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडीकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 52/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार का 30-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/78/2001-आईआर(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1127.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2001) of the Central Government Industrial Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workmen, which was received by the Central Government on 30-3-2007.

[No. L-12012/78/2001-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated the 2nd March, 2007

PRESENT:

Shri A. R. Siddiqui, Presiding Officer

C.R. No. 52/01

I PARTY

Shri M.N. Reddy,
C/o Nagappa Compund,
Near Shanti Sisu Vihar School,
Talur Road, Bellary.

II PARTY

The Asstt. General Manager,
Syndicate Bank, Head Office,
Manipal, Karnataka State.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order. No.L-12012/78/2001-IR (B-II) dated 13th August, 2001 for adjudication on the following schedule :

SCHEDULE

“Whether the action of the management of M/s Syndicate Bank is justified in terminating the services of Shri M.N. Reddy? If not, what relief the workman is entitled to?”

2. The first party workman by way of his claim statement, challenged the enquiry proceedings on various grounds as opposed to the principles of natural justice, challenged the enquiry findings as perverse on the ground that they are not based upon sufficient and legal evidence and the evidence brought on record including the defence

evidence has not been appreciated by the Enquiry Officer in its proper perspective. He also challenged the dismissal order passed against him as unjust and illegal.

3. The management by its Counter Statement however, asserted and maintained that the Domestic Enquiry against the first party has been conducted in accordance with the principles of natural justice giving opportunity to the first party to defend himself and he in fact, participated in the enquiry proceedings throughout taking the assistance of one Mr. Abdul Jaleel, who was working as Secretary, Syndicate Bank Employees Union. The management further contended that the findings of the enquiry officer have been supported by sufficient and legal evidence, much less, cogent and valid reasonings and therefore, they are not suffered from any perversity. As far as the order of dismissal is concerned, the management contended that the punishment of dismissal was quite proportionate to the gravity of the misconduct of misappropriation of Rs.1000 by the first party received by him from a customer by name Shri N. Honnur Sab and not accounted with the bank accounts except in the ledger folio, that too, on 16-2-1999.

4. Keeping in view the respective contentions of the parties with regard to the validity and fairness or otherwise of the enquiry proceedings this tribunal on 24-4-2004 framed the following Preliminary Issue. The management on the above said issue examined the enquiry officer as MW1 and got marked documents at Ex. M1 to M8. The first party filed his affidavit evidence and was cross examined by the management accordingly. This tribunal by order dated 20-7-2006 passed an order on the above said issue holding that the Domestic Enquiry conducted against the first party by the Second Party is fair and proper. Thereupon, the matter came to be posted for hearing of the arguments on merits. After having heard the learned counsels for the respective parties on merits case is posted this day for award.

5. Learned counsel for the management vehemently argued that in the face of the finding recorded by this tribunal holding that the Domestic Enquiry conducted against the first party was fair and proper, and heavy burden cast upon the first party to prove that the enquiry suffered from any perversity. He contended that there has been a very cogent and clinching evidence brought on record during the course of enquiry apart from the very admissions made by the first party that he had received a sum of Rs. 1000 from the said Hannur Sab on 15-2-1999 passing a challan/counter foil in favour of the said Hannur Sab (complainant in this case). It is also proved that despite the receipt of the said amount from the said customer by the first party he did not account the same with the bank registers but made a fictitious entry in the ledger on 16-2-1999 showing the credit of Rs. 1000 to the bank by the said customer. He contended that the defence taken by the first party that he had returned back the said amount to

the said customer as he found some of the currency notes torn off but failed to collect the challan from the customer is neither plausible nor acceptable and rightly has been discarded by the enquiry officer and thereafter the disciplinary authority.

6. With regard to other three charged, learned counsel submitted that the punishment imposed on those charges by the Disciplinary Authority has not been challenged by way of the present reference. Therefore, the evidence brought on record and the findings of the enquiry officer on those charges need not be scrutinised. He contended that even otherwise, those charges have also been proved, as charges Nos. 2 & 3 were admitted by the first party himself and whereas, charge No. 4 has been establishment by the management by producing the necessary records.

7. Whereas, learned counsel of the first party vehemently argued that the first charge leveled against the first party about the misappropriation of sum of Rs. 1000 undisputedly was based upon the complaint filed by the said Hannur Sab marked at Ex. MEX. 5 before the enquiry officer and since the said complainant subsequently had withdrawn his aforesaid complaint by his letter dated 23-4-1999 marked at Ex. MEX. 36 and as a defence witness made deposition before the enquiry officer that on 15-2-1999 he was returned the said amount by saying that some of the notes were torn. The learned enquiry officer was not justified in coming to the conclusion that contents of Ex. MEX. 5, the first complaint by the said customer have been proved and that the defence taken by the first party as well as the statement of said Hannur Sab is not trust worthy. He submitted that the entry made by the first party in the ledger on 16-2-1999 with regard to the credit of Rs. 1000 with the bank by the said customer was nothing to do with the alleged payment made by the customer on 15-2-1999. He also argued as to how the other three charges have not been proved against the first party. His last submission was to the effect that at the most the first party can be held responsible for the act of negligence of not collecting back the challan/counterfoil from the said customer after having returned the amount and therefore, punishment of dismissal imposed upon the first party in the light of the first charge is liable to be modified by lesser punishment.

8. It appears to me worthwhile to being on record the very observations/reasonings given by the enquiry officer on the first charge levelled against the first party workman in order to appreciate the respective arguments advanced for the parties are as under :—

"I observed from the evidence of MW2, the Manager that while tallying OSI, balancing as on the last Friday of February, 1999, Shri B.S. Prasad, Asstt. manager located a fictitious entry of Rs. 1000 in the OSL/SSI account 167/98 of Shri N. Honnur Sab and informed the Manager about this. Then the Manager also

verified for the corresponding entries in cash scrolls and sub day book. He could not find the relevant entry. Mr. M. N. Reddy, the CSE was enquired for the entry made in the ledger as it was in his handwriting. He confirmed that it is his handwriting only and he could not show the voucher. On 4-3-1999 the correct balance was put and was report to higher authorities.

The customer produced the receipt with cash received seal and initials of Mr. Reddy. The Manager enquired the matter with the CSE, the cashier on 15-2-1999 (MEX1) (office Order). The CSE did not come out with the true facts and circumstances under which he accepted and then returned the cash along with the challan i.e. the stand taken by him at a later date when the investigation officer visited the branch to investigate the matter. MW2 has deposed that the CSE denied it at that point of time.

The complaint MEX 5 is specific as to cashier returning the receipt to the borrower/customer holding the remaining portion with him. The same receipt is enclosed to the complaint while lodging it on 16-3-1999 by the customer.

Referring cross examination and re-examination of MW1, the customer who admitted the facts as narrated in his complaint dated 16-3-1999 and confirmed having given the complaint before investigating officer and the manager on 22-4-1999 also resorted to the same stand as that of the CSE subsequently on 23-4-1999. He gave the letter in writing to the Investigating Officer explaining the reasons for withdrawing the complaint and also informed MW1 that the CSE requested him that his complaint will affect the CSE's career. Hence he had to change the statement. MW2, the branch manager also deposed that the customer did not express his intention of withdrawing the complaint from the date of lodging it i.e. 16-3-1999 till he met and discussed the matter with the Investigating Officer on 22-4-1999. Realising the gravity and effect of his complaint for which the Investigating Officer had to come from Bangalore to investigate the matter and also at the request of the CSE the customer decided to withdraw the complaint and submitted the letter on 23-4-1999 (MEX-36). The reasons for withdrawal are :

- (1) The remittance contained cut/coloured notes.
- (2) The entire slip was returned along with cash.
- (3) The manager did not tell to which month the installment was not paid.
- (4) Handing over the challan to Manager when he visited his residence.

I observe from the evidence led in the enquiry that:

1. The remittance contained only 2 cut notes and

one coloured note in Rs. 50 denominations. The CSE has not brought it on record how the said notes were beyond the norms of acceptance by the Bank and why the matter was not referred to the Manager before returning the remittance. When an ordinary businessman like Mr. Honnur Sab, the customer, can accept such notes from his clientele, why a Bank cannot accept those notes.

2. Had Mr. Honnur Sab got back the cash, why did he not depose the reasons for preserving the said receipt for nearly one month and thereafter enclosing it to MEX-5. If the entire challan was handed over to the customer, then why it was not produced before the forum by the customer. In his complaint, the customer categorically stated that the cashier gave the receipt tearing it from the challan and the said receipt alone is enclosed to his complaint.

3. The contention of DW1 that he handed over the entire challan to the Manager, when he visited his residence, is also not corroborated by cross examining MW2, the Manager by the CSE. There is no mention in any of his letters dated 16-3-1999, 23-4-1999 and 27-7-1999 that Manager went to his residence and also did not tell him to which month the instalment was not paid. As per the deposition of MW2, I observe that neither the Manager went to his residence nor the customer handed over the entire slip to the Manager. He has remitted amount on 15-2-1999. He is paying instalments regularly, in fact, paying more than the instalment fixed per months, as observed from MEX-3. Before making the complaint, it was open to him to verify the regularity of his loan account and to confirm the month of default, if any. His deposition that he lodged the complaint on the vague information given by the manager, has no credence.

Though DW1 states that Manager took back the challan from his residence, it is a fact that DW1 himself enclosed the receipt along with MEX-5 i.e. complaint given to the Manager.

When the Manager appeared as a witness the CSE did not put any question to him if the manager had really visited complainant's house.

Making allegations/statements behind the back of a witness is not permissible. When the witness was very much available before the enquiry for cross examination, the CSE should have utilized this opportunity to bring home his defence/plea instead of making allegations against the manger after he left the enquiry.

DW1 has given evasive answers to the questions put by MR that "my uncle has written, my uncle knows etc." Unless he narrates the facts, his uncle cannot contemplate the facts and write the letters on

his own with so much of precision. Hence I find no credence and substance in such depositions. I find no other reason to withdraw the complaint except to help the CSE since he was blamed and questioned as deposed by DW1 in cross examination by MR and also deposed by MW1 in his cross examination and re-examination that while giving MEX 36 (withdrawal of complaint) the customer informed him that employee should not be affected by his complaint and hence changed the stand.

The CSE has not made it clear which slip he entered in the said loan account as "by cash" on 16-2-1999. He himself was the cashier on that day. Hence, it is within his knowledge that there was no cash/cash voucher received towards that loan account. On verification of relevant books also there is sign of receipt of cash for that account. Under such circumstances the entry made without being backed by any official voucher is not doubt a fictitious entry. The CSE has resorted to make such an entry with some malafide intentions only and not with an intention to help the loan department on that day and also he was not asked to assist that department by the supervisor. Referring to MEX-2 (attendance register), I observe all the 5 clerks were present. In the guise of help in the department, there was no necessity for the CSE to take initiative for making that particular entry. The defence did not show any other entries made in loan ledgers by the CSE on 16-2-1999. Moreover, the CSE has made this entry without the knowledge of MW3 & MW 4. i.e. concerned supervisor and clerk. The CSE has not only entered it but initialed purportedly to authenticate it. The CSE in his submissions and also as per MEX 35 states that he found a credit slip already kept in the ledger folio and made the entry. The defence has not cross examined the supervisor as to why he did not check the entry when it was entered by Mr. Reddy backed by voucher. It is also not brought on record to whom the CSE gave the ledger for checking. Hence it is evident that the CSE surreptitiously made the entry and initialed to make believe that it is checked by the concerned supervisor. The CSE should have examined himself as a witness to explain the circumstances under which he made such an entry and should have exposed to cross examination to prove his action. After locating such a fictitious entry on 4-3-1999 and correcting it, Mr. Hannursab, the borrower of that loan account OSL/SSI/167/98 came to the branch as usual to pay monthly instalment on 16-3-1999. He enquired the loan balance and came to know that amount remitted by him on 15-2-1999 was not accounted. Having in possession of the receipt dated 15-2-1999 for Rs. 1000/- remitted towards his above loan account,

he enquired the manager to rectify the mistake and to punish the concerned. He enclosed the receipt to the said complaint. He took the help of his uncle to write the complaint.

Thus an entry is made for Rs. 1000/- by the CSE in the loan account without receiving cash on 16-2-1999 and on the previous day receiving cash of Rs. 1000 towards the same loan account, he did not make an entry to account it. Such act on the part of the CSE to make believe the customer/officials that the money was credited to the loan account (without supporting voucher) amounts to misappropriation.

Assessing the evidence and depositions on correlating the incident of making superfluous/fictitious entry for only Rs. 1000 without the knowledge of the concerned, I draw conclusion from totality of the circumstances that there was no reason for him to do such an act except to conceal the misappropriation of Rs. 1000 i. e. the exact amount remitted on previous day, which he had not accounted he should have clarified the whole circumstances by appearing himself as witness and justified his innocence how he became the by certain vested interested personnel."

9. Therefore, from the discussion made on the evidence produced before the enquiry officer and the reasonings given by him by no stretch of imagination it can be said that his findings suffered from any perversity. The evidence on record is cogent enough to speak to the fact that on 15-2-1999 the Complainant, Shri Hannursab having visited the management bank handed over a sum of Rs. 1000 to the first party and the first party having received the same passed the credit slip/challan i.e. the counterfoil in favour of the said customer acknowledging the receipt of the said amount. There is absolutely no denial of the fact by the first party that on 15-2-1999 the said complainant had come to his counter and wanted to deposit a sum of Rs. 1000/- and he was issued the credit slip for the payment of the said amount by the first party. The defence taken by the first party that he had to return back the said amount of Rs. 1000 to the said customer after having found some of the currency notes torn/cut and some of them being coloured, has rightly been rejected by the enquiry officer for more than one reasons. First of all it was not expected of the first party, a bank official dealing with the cash in passing the credit slip/challan in favour of the customer before he received the amount and counted the same to his satisfaction. It just cannot be believed that he first passed the challan/credit slip in favour of the customer and thereafter looked into the currency notes produced by the customer so as to find some of them cut and coloured as it is tried to be made out. It is also not expected of the first party to have allowed the customer to leave the bank premises with the amount along with the credit slip itself which he had already passed in his favour. Had he really

returned the amount, then it was quite natural on his part to have received back the said challan/credit slip from the customer. Moreover, as observed by the learned enquiry officer the remittance contained only two cut notes and one coloured note in Rs. 50 denomination. The first party did not bring it on record as to how the said notes were beyond the norms of acceptance by the bank and as to why the matter was not referred to the Manager before returning the remittance. He rightly observed that when an ordinary business man like Hannursab can accept such notes from his clientele, why a bank cannot accept those notes. That apart, the first party could have received the balance amount of Rs. 850 returning back those three notes to the customer and not the entire amount. The defence of the first party was certainly an after thought and to circumvent the charge of the misconduct levelled against him. The learned counsel for the first party argued that in the face of the said statement of Hannursab before the enquiry officer and in view of the fact that he had withdrawn his complaint, at Ex. M5 by giving the letter at Ex. MEX 36 charge of misappropriation could not have been sustained as the charge sheet was based upon the original complaint itself. I am not inclined to accept this argument. It was well observed by the learned enquiry officer that the above said statement made by Shri Hannursab and the letter sent to the management a month after the original complaint must have been at the instance of the first party and that said Shri Hannursab might have come forward to help him out from the mess he created by filing the complaint on 16-3-1999 itself. The fact that Shri Hannursab kept quite after having filed the said complaint for a period of about one month without withdrawing his complaint must lead to the inference that the original complaint filed by him was very much based upon the truth. Moreover, in his cross examination Shri Hannursab just wanted to throw the blame upon his uncle for filing the above said complaint. His statement that he did not know what his uncle wrote in his complaint was rightly rejected by the Enquiry Officer as an after thought and a make believe story. Moreover, for having received the amount from Shri Hannursab, the first party makes a corresponding entry in the ledger of the bank on 16-2-1999 showing the credit of Rs. 1000 with the bank from the very same customer. It is his case that his entry in the ledger made by him admittedly, was not with respect to the incident taken place on 15-2-1999. It is yet to be explained by him as to whether any such amount of Rs. 1000 was actually paid by said Hannursab with the bank on 16-2-1999 so as to show that this entry was nothing to do with the incident of 15-2-1999. Therefore, the very fact that the first party made a credit entry in the ledger of Rs. 1000 on the following day and failed to make any other corresponding entry in the other books of account with the bank must lend support to the contention of the management that he made the above said entry just to hoodwink the officers of the bank. Undisputedly, there was no voucher with the bank available for the credit amount of Rs. 1000 as on

16-2-1999 belonging to the said customer. Therefore, in the light of the above, I must hold that the aforesaid charge No. 1 has been proved against the first party by sufficient and legal evidence and the findings of the enquiry officer on the said point suffered from no perversity.

10. Now, coming to the charge Nos. 2 to 4 and the punishment imposed upon the first party on those charges reducing his basic pay by one stage for one year. It is to be noted that this is the minor punishment imposed upon the first party has not been challenged by way of present reference. The reference on hand is only with respect to the dismissal order passed against him. Moreover, charge Nos. 2 to 4 also have been established by the management by sufficient and satisfactory evidence much less the very admissions of the first party with regard to Charge Nos. 2 and 3 discussed in the findings.

11. Now, coming to the punishment of dismissal. It is not in dispute that the first party had been in the service of the management for about a period of 24 years without any black mark in his service records. Therefore, keeping in view the above said factor and the nature of the offence committed by him, it appears to me that ends of justice will be met if the punishment of dismissal is replaced by the punishment of Compulsory Retirement. Hence the following Award :

AWARD

The punishment of dismissal passed against the first party is hereby replaced by the punishment of compulsory retirement from service from the date of impugned punishment order. No costs.

(Dictated to PA transcribed by her corrected and signed by me on 2nd March 2007.)

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 30 मार्च, 2007

का.आ. 1128.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ बड़ोदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ संख्या 103/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/381/94-आई.आर.(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1128.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 103/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to

the management of Bank of Baroda and their workmen, which was received by the Central Government on 30-3-2007.

[No. L-12012/381/94-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI A. N. YADAV, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/103/2002 Date : 15-03-2007

Petitioner/ Party No. 1 : Shri A. S. Arokar, Through President All India Bank of Baroda Employees' Union, 542, Dr. Munge Marg, Humpyard Road, Congress Nagar, Nagpur—440012(M.S.)
Versus

Respondent/ Party No. 2 : Bank of Baroda, Through Deputy General Manager, Maharashtra & Goa Zone, Zonal Office, NABARD Building, Bombay-Puna Road, Pune—411005.

AWARD

[Dated : 15th March, 2007]

1. The Central Government after satisfying the existence of disputes between Shri A. S. Arokar, Through President All India Bank of Baroda Employees' Union, 542, Dr. Munge Marg, Humpyard Road, Congress Nagar, Nagpur—440012 [M.S.] Party No.1 and Bank of Baroda, Through Deputy General Manager, Maharashtra & Goa Zone, Zonal, Office, NABARD Building, Bombay—Puna Road, Pune-411005 Party No. 2 referred the same for adjudication to this Tribunal *vide* its Letter No. L-12012/381/94-IR (B-II) Dtd. 05-06-1995 under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 [14 of 1947] with the following schedule.

2. "Whether the action of the Management of Bank of Baroda, Pune in awarding the punishment of warning and reduction of pay to the next lower stage for a period of 2 years on Sri. A. S. Arokar, Head Cashier *vide* their Order Dtd. 31-03-1993, is justified? If not, to what relief is the said workman entitled?"

3. The above case was fixed for filing the affidavit of the workman. Today the petitioner through his counsel has filed the Pursis in the above case that he wants to withdraw the case. Accordingly his application is allowed, he is permitted to withdraw the case unconditionally. Thus the above case stands as dispose off for want of prosecution.

Hence this award.

Dated : 15-03-2007

A. N. YADAV, Presiding Officer

नई दिल्ली, 30 मार्च, 2007

का.आ. 1129.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण /श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 68/2003 एवं 69/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/39/2003-आई.आर.(बी-II)]

[सं. एल-12012/40/2003-आई.आर.(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1129.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/2003 & 69/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workmen, which was received by the Central Government on 30-3-2007.

[No. L-12012/39/2003-IR (B-II)]

[No. L-12012/40/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT LUCKNOW**

PRESENT

SHRI KANT SHUKLA, Presiding Officer

I. D. No. 68/2003

Ref. No. L-12012/39/2003-IR (B-II) Dated 9-6-2003

BETWEEN

Sh. Ravindra Nath S/o Baijnath Prasad
Chowk Katra, Station Road,
Ballia-(U.P.)

And

The Regional Manager,
Bank of Baroda
Zonal Office, 45, Jeewan Bima Bhawan
Lucknow

I.D. No. 69/2003

Ref. No. L-12012/40-2003-IR(B-II) Dt. 9-6-2003

Between

Sh. Bhaiya Laloo Singh
S/o Late Baramhans Singh
Village Udapura, Po Sawaroobandh
Ballia (U.P.)

And

Regional Manager,
Bank of Baroda, Eastern, U.P. Zone
Zonal Office, 45, Jeewan Bima Bhawan
Lucknow

AWARD

The Government of India, Ministry of Labour, New Delhi refer the following disputes No. L-12012/39/2003-IR (B-II) dated 9-6-2003 and L-12012/40/2003-IR(B-II) Dt. 9-6-03 for adjudication to the Presiding Officer, CGIT-cum - Labour Court, Lucknow;

68/2003

"Whether the action of the Management of Bank of Baroda in terminating the services of Sh. Ravindra Nath as a Deposit Collector (held to be a workman within the meaning of Industrial Dispute Act 1947 by the Honble Apex Court in its judgement Dt. 13-2-2001) w.e.f. 19-6-02 is legal and justified. If, not, what relief the workman is entitled for?

69/2003

"Whether the action of the management of Bank of Baroda in terminating the services of Sh. Bhaiya Lallo Singh as a Deposit Collector (held to be a workman within the meaning of Industrial Dispute Act 1947 by the Honble Apex Court in its judgement Dt. 13-2-2001) w.e.f. 19-6-02 is legal and justified ? If, not, what relief the workman is entitled for?

The issue for adjudication in both of the cases are similar date of termination is the same. Opposite party in both the cases are same therefore both the cases are taken together for adjudication.

The issues are to be adjudicated as per the judgement passed in Civil Misc. Appeal No.3355 of 1998 of Indian Banks Association appellant Vs workmen of Syndicate Bank and others respondents passed by the Hon'ble Supreme Court of India on 13-2-2001, the judgement is reproduced below;

Supreme Court of India
Civil Appeal No. 3355 of 1998

Judgement

S.N. VARIYA, J.

Leave granted in SLP(C) No. 9000/1998

All these Appeals against a common judgment dated 30th March 1997. A common question arises in all these Appeals.

The Government of India, Ministry of Labour by an order dt. 3rd October 1980 referred the following dispute under Section 7A and 10(1) of the Industrial Disputes Act, between the Management of 11 Banks and the Deposit Collectors to the Industrial Tribunal, Hyderabad for adjudication:

"Whether the ~~employees~~ of the Commission Agents or as the case may be Deposit Collector employed in the

Banks listed in the Annexure that they are entitled to pay scales, allowances and other service conditions available to regular clerical employees of those banks is justified? If not, to what relief are the workmen concerned entitled and from which date?"

Before the Tribunal parties lead evidence both oral and documentary: After hearing the parties the Tribunal by the Award dated 22nd December, 1988 held that the Deposit Collectors were workmen of the concerned Bank. The Tribunal then directed as follows;

All those Deposit Collectors and Agents who are below the age of 45 years on 03-10-1980 (the date of the first reference of this industrial dispute) shall be considered for the regular absorption for the post of Clerks and Cashiers. If they are matriculates and above including qualified Graduates and Post Graduates. They may be taken to Banks services as regular employees. If they pass the qualifying examinations conducted by the Banks. Those who are absorbed shall be treated on par with regular clerical employees of the Bank. Those who are qualified with 8th Class and below Matriculations shall be considered for absorption as sub-staff by conducting qualifications examinations.

As regards the Deposit Collectors and Agents who are above 45 years of age on the date 3-10-1980 and also those who are un-willing to be absorbed in Regular Banks service they shall be paid the fall back wage of Rs. 750.00 per month linked with minimum deposit of Rs. 7,500.00 per month and they should be paid incentive remuneration at 2% for collections, of over and above 7,500.00 per month and they should also pay uniform conveyance of Rs. 50 per month for deposit of less than Rs. 10,000.00 and Rs. 100.00 per month for deposits of more than, Rs. 10,000.00 upto or above Rs. 30,000.00 per month they should be paid Gratuity of 15 days commission for each year of service rendered."

Various Writ Petitions were filed by various Banks and the Indian Banks Association. All were disposed off by the impugned Judgement dated 20th March, 1997.

Before the High Court it has been conceded that relief of being absorbed as regular staff of the banks in clerical cadre was not available to be granted. On this concession the High Court set aside the directions of the Tribunal to absorb the Deposit Collectors, as regular staff. The High Court however upheld the other directions of the Tribunal payment of fell back wages, conveyance allowance, gratuity etc.

Except for C.A. No. 3356 of 1998, all these Appeals have been filed by the various Banks and/or the Indian Banks Association. C.A. No. 3356 of 1998 has been filed by the National Confederation of Bank Employees. This Appeal is against that portion of the Impugned Judgement,

whereunder the relief of absorption as a regular employee has been set aside.

On behalf of the Appellants it has been submitted that the Deposit Collectors could not be treated as workmen since their engagement were purely a matter of contract between the parties. It was submitted that the Agreements were, in all cases, for a specific period. It was submitted that the Deposit Collectors did their work without any control or supervision of the Banks. It was submitted that the Deposit Collectors could also do other works and take on other employment. It was submitted that the Deposit Collectors or for their attendance in the Bank. It was submitted that these Deposit Collectors could come to the Bank at any time and make the deposits. It was further submitted that there was no qualification or age limit for a person to be engaged as a Deposit Collector and that, in fact, many of the Deposit Collectors were well advanced in age. It was submitted that no disciplinary action could be taken against the Deposit Collectors. It was submitted that all the above mentioned facts showed that there was not relationship of master and servant and that, therefore, these Deposit Collectors were not workmen.

Reliance has also been placed on Section 10 of the Banking Regulation Act. The relevant portion of Section 10 reads as follows :—

"10. Prohibition of employment of managing agents and restrictions on certain forms of employment—

(1) No banking company—

- (a) shall employ or be managed by managing agent, or
- (b) shall employ or continue the employment of any person—

- (i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is or has been convicted, by a Criminal Court of an offence involving moral turpitude; or
- (ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company,

Provided that nothing contained in this sub-clause shall apply to the payment by a banking company of—

(a) any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business;

(b) any commission to any broker (including guarantee broker), cashier-contractor, clearing and forwarding agent, auctioneer or any other person employed by the banking company under a contract otherwise than as a regular member of the staff of the company; or

* * *

* * *

* * *

It was submitted that Section 10(b) clearly lays down that a banking company cannot employ any person whose remuneration or part of whose remuneration takes the form on commission or of a share in the profits of the company. It was submitted that it was an admitted position that commission was paid to the Deposit Collectors. It was submitted that it can never be presumed that the Banks were employing persons contrary to the provisions of the Banking Regulation Act. It was submitted that this showed that these Deposit Collectors were not employed by the Banks. It was submitted that the proviso (b), which permitted payment of commission under a contract to a person who was not a regular member of the staff was merely an extension and did not detract from the main proviso which prevented employment on commission basis.

It was also submitted that the Deposit Collection Schemes were unremunerated and were not viable. Certain charts and figures were shown to the Court and it was submitted that the Banks were suffering a loss in running these Schemes. It was submitted that neither the Tribunal nor the High Court had gone into viability of the Schemes.

Mr. P.P. Rao further submitted that the Banking Regulation is an Act of 1949. He took the Court through the definition of the term "workman". In the Industrial Disputes Act as well as various other Acts like Beedi and Cigar Workers (Conditions of Employment) Act, Coal Mines Provident Fund and Misc. Provisions Act, Contract Labour (Regulation and Abolition) Act etc. He submitted that under each Act the definition was framed as per the purpose of the Act. He pointed out that depending on the purpose of the Act, either a wide or narrow definition had been given to the term "worker". He pointed out that the proviso to Section 10 of the Banking Regulation Act has been operative since 1949. He submitted that the Industrial Disputes Act the definition of the term "worker" in Section 2(s) was amended in 1984. He submitted that even in 1984 the Legislature did not think it fit to include in this definition a person who was receiving commission. He submitted that this clearly indicates that persons receiving commission were not meant to be and were not workmen within the meaning of the term as laid down in the Industrial Disputes Act.

Mr. P.P. Rao further submitted that if the Deposit Collectors are not workmen, then their entitlement has to be as per their contract or as per the provisions of a statute. He submitted that the Tribunal had no power to change the contract between the parties and/or to impose conditions of service. He submitted that the Tribunal could only have done so, provided it was statutory permitted or it was so provided in the Contract. He submitted that the gratuity which has been awarded by the Tribunal is neither as per the contract between the parties nor as per the provisions of the Payment of Gratuity Act. He submitted that the Deposit Collectors have concealed what they were receiving from the other employment. He submitted that

this information should have been called for. He submitted that the entire liability has been foisted on the Banks, when in fact the other employer should be sharing the burden imposed on the Banks.

It was submitted on behalf of the Appellants that, for all the above reasons, the impugned Order and the directions given by the Tribunal should be set aside.

On the other hand Mr. Sharma, on behalf of the Respondents, submitted that the Deposit Collectors had to regularly visit the small depositors, i.e. small traders, house-wives, students etc. He submitted that they would have to do to these depositors at times which were convenient to those persons or at times when they would be in a position to give the deposit. He submitted that the Deposit Collectors may also have to make more than one visit to small depositors. He submitted that the Deposit Collectors would have to collect deposits from all these persons and then take the collections to entries and filling up the relevant forms. He submitted that the work of Deposit Collectors was manual in as much as they had to make the collections by going from place to place and from depositor to depositor and that it was also clerical in as much as they had to fill up various forms, accounts, registers and pass books every day. He submitted that over and above this work many of the Deposit Collectors were also made to do other sundry works of a clerical nature in the banks. He submitted that amount received by the Deposit Collectors by way of commission was wage linked to productivity. He submitted that it was incorrect to state that the banks had not control over the Deposit Collectors. He submitted that the banks exercised control over the Deposit Collectors and laid down various stipulations which were to be followed by these Deposit Collectors. He submitted that merely because the nature of the control was different did not mean that there was no control.

Mr. Sharma relied upon the definition of the term "wages" in Section 2(rr) of the Industrial Disputes Act, which reads as follows :

"2(rr) "Wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes .

- (i) such allowances (including dearness allowance) as the workman is for the time being entitled to;
- (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
- (iii) any travelling concession;
- (iv) any commission payable on the promotion of sales of business or both;

but does not include—

- (a) any bonus;
- (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;
- (c) any gratuity payable on the termination of his service."

He points out that, under sub-clause (iv) of the above definition, 'wage' includes commission payable on promotion of sales or business or both. He submitted that the commission which was received by Deposit Collectors was for promotion of the business of the banks viz. receiving deposits from Investors,

Mr. Sharma submitted that the proviso to Section 10 clearly laid down that commission could be paid to a person who was not in the regular employment of a bank. He submitted that therefore, Section 10 of the Banking Regulations Act did not prevent Deposit Collectors from being workmen as defined in the Industrial Disputes Act. In support of this submission he relied upon an authority of the Madras High Court in the case of The Management of Indian Bank V. The Presiding Officer, Industrial Tribunal (C) & Anr. reported in (1990) 1 LLJ 50. In this case it has been held that Deposit Collectors satisfy the definition of "workmen" under the Industrial Disputes Act and that they are "workmen" as defined in the Industrial Disputes Act. It has been held that the banks have control over such Deposit Collectors and that Section 10 of the Banking Regulation Act did not help the banks in contending that Deposit Collectors were not workmen.

Mr. Sharma relied upon the case of Silver Jubilee Tailoring House & Ors. V. Chief Inspector of Shops and Establishments & Anr. reported in (1974) 1 LLJ 747. In this case the question was whether certain tailors working with the Appellant Company were employees of the Appellant and were covered by the Andhra Pradesh Shops and Establishments Act and payment of Wages Act. The questions which arose for consideration were whether the Appellants had control over these tailors and whether the fact that these tailors could work for more than one employee meant that there was no relationship of master and servant. This court held that during the last two decades the emphasis in deciding the question of relationship of employer and employee had changed. It held that while control was an important factor it was wrong to say that in every case it would be a decisive factor. It held that the degree of control and supervision would be different in different types of business and that what was essential was an element of authority over this workers in the performance of the work, so that the employee was subject to the directions of the employer. It also held that working with more than one employer did not militate against being the employee of the proprietor of the shop.

where no attended the work. It held that a servant need not be in the exclusive control of one master. It held that the fact that the workers were not obliged to work whole day was also not very material. It held that all that was necessary was that the workman was principally employed by the employer.

Mr. Sharma also relied upon the case of Dharangadhara Chemical Works Ltd V. State of Saurashtra reported in (1957) SCR 152. In this case the Appellants were lessees held the licence for the manufacture of salt on certain lands. The salt was manufactured by labourers known as Agarias from rain water that got mixed with saline matter in the soil. The work was seasonal in nature and commenced in October after the rains and continued till June. Thereafter the Agarias left for their own villages and did their own cultivation work. During the season the lands were divided into plots and plots were allotted to the Agaries. Generally the same plot was allotted in the same Agaria every year. After manufacturing of salt the Agarias were paid at the rate of 5 as 6 pies per maund. At the end of each season the accounts were settled and the Agarias were paid the balance due to them. During the season the Agarias worked with the members of their families and were free to render extra work labour on their own, if they so desired. No hours of work were prescribed, no master roll maintained, nor were working hours controlled by the Appellants. There were no rules as regards leave or holidays and the Agarias were free to go out of the factory after making arrangements for manufacturing of salt. The question for consideration before this Court was whether the Agarias were workmen within the meaning of the Industrial Disputes Act. The Court held that the *prima facie* test of master of servant between employer and employee was the existence of the right in the employer not merely to direct what work was to be done but also to control the manner in which it was to be done. The nature of extent of such control varying in different industries and being by its nature incapable of being precisely defined. This court held that the correct approach, therefore, was to consider whether, having regard to the nature of the work, there was due control and supervision of the employer. This court further held that the question whether the relationship between the parties was one as between an employer and employee was a question of fact was not open to question in a proceeding under Article 226 of the Constitution, unless it could be shown to wholly unwarranted by the evidence.

Mr. Sharma submitted that in this case the Tribunal had, on consideration of evidence and material before it, arrived at a positive finding that there was control by the banks and that there was a relationship of master and servant. He submitted that such finding of fact was based upon the evidence on record and nothing had been shown that such finding was unwarranted or unsustainable on the basis of evidence on record. He submitted that the High Court was thus right in not interfering with such findings of fact.

On the question of the Scheme being unremunerative, Mr. Sharma showed certain pamphlets and circulars recently issued by one of the banks, which is before this Court. He pointed out, from these pamphlets and circulars, that far from the Scheme being unremunerative the banks were receiving large amounts as deposits through such schemes. He pointed out that the Banks were wanting to continue with such schemes.

Mr. Sharma submitted that gratuity need not be only under the Payment of Gratuity Act. He submitted that the Tribunal had not said that it was awarding gratuity under the Gratuity Act. He submitted that the Tribunal has powers, dehors the Gratuity Act, to direct payment of Gratuity. He submitted that the Tribunal always has power and jurisdiction to modify conditions of service and, in this case it has been found by the Tribunal that there was no fixed pay scales, no bonus no gratuity, no dearness allowance and therefore, the Tribunal had given the direction, as set out hereinabove, as and by way of a package. He submitted that earlier commission was being paid at a rate of 3.5 per cent by most of banks. He pointed out that now, over and above the sum of Rs. 7,500, the commission had been reduced to 2 per cent. He submitted that to that extent Deposit Collectors were loosing, but as this was part of the package as given by the Tribunal it was being accepted by the Deposit Collectors. He submitted that the directions given by the Tribunal were fair and just and absolutely right. He submitted that the Order of the High Court was correct and this Court should not interfere.

Mr. Nageshwar Rao, who appeared for the Appellants in C.A. No. 3356 of 1998, supported Mr. Sharma in all his submissions. He, however, submitted that the High Court was wrong in setting aside the directions regarding regulation of service. He submitted that the concession which had been made before the High Court had not been made on behalf of his clients and his clients could not be held to be bound by such concession. He submitted that in any case the Deposit Collectors should get the pay scales, allowance and other service conditions of the other employees of the banks. He submitted that even though the Deposit Collectors may not have been absorbed as regular employees of the banks. Yet they should have been granted the pay scales, allowance and other service conditions of the employees of the banks. He submitted that most of these Deposit Collectors had been working for 20 to 25 years and that there was nothing wrong if they were either absorbed in the banks or given the pay scales, allowances and other service conditions of the other employees of the banks.

We have considered the rival submissions. In our view, Mr. Sharma was right when he submitted that on the basis of evidence before it the Tribunal has given findings of fact that the Deposit Collectors were workmen within the meaning of Section 2 (develop) of the Industrial Disputes Act. On the evidence on record it could not be

said that this finding was unsustainable. Having been shown the relevant evidence we are also of the opinion that the Tribunal correctly arrived at a conclusion that these Deposit Collectors were workmen.

Further, as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by the Deposit Collectors is nothing else but wage, which is dependent on the productivity. This commission is paid for promoting the business of the various banks.

We also cannot accept the submission that the Banks have no control over the Deposit Collectors. Undoubtedly, the Deposit Collectors are free to regulate their own hours of work, but that is because the nature of the work itself. It would be impossible to fix working hours for such Deposit Collectors because they have to go to various depositors. This would have to be done at the convenience of the depositors and at such times as required by the depositors. If this is so then no time can be fixed for such work. However, there is control in as much as the Deposit collectors have to bring the collections and deposit the same in the banks by the very next day. They have to then fill in various accounts registers and pass books. They also have to do such other clerical work as the bank may direct. There are, therefore, accountable to the bank and under the control of the bank.

We also see no force in the contention that Section 10 of the Banking Regulations Act prevents employment of persons on commission basis. The proviso to Section 10 makes it clear that commission can be paid to persons who are not in regular employment. Undoubtedly the Deposit Collectors are not regular employees of the Bank. But they nevertheless are workers within the meaning of the term as defined in the Industrial Disputes Act. There is clearly a relationship of master and servant between the Deposit Collectors and the concerned Bank.

Mr. Nageshwar Rao is right in his submission that the concession was not binding on his clients. However, what has been conceded has been correctly conceded. No question arose of directing absorption of the Deposit Collectors as regular workmen. No such demand had been made and, therefore, there could have been no such direction. Such directions were beyond the reference. Even otherwise, the question of absorption would be fully covered by an authority of this Court in the case of Union of India & Ors. V. K. V. Boby & Anr. reported in (1999) 1 LLJ 1290. In this case it has been held that persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work. It has been held that the mode of selection and qualifications are not comparable with those of the employees, even though the employees may be doing similar works. In the present case, not only are the modes of selection and qualifications not comparable, but even the work is not comparable. The work

which the Deposit Collectors do is completely different from the work which the regular employees do. There was thus no question of absorption and there was also no question of the Deposit Collectors being paid the same pay scales, allowances, and other service conditions of the regular employees of the banks.

We also see no substance in the contention that these schemes are unremunerative. The Banks have introduced these Schemes because they want to encourage the common man to make small and regular deposits. As a result of such Schemes, the number of depositors have become much larger. We have no doubt that such Schemes are continued because the Banks find them remunerative. The Banks have large collections through such schemes.

For the reasons set out hereinabove, we see no substance in any of these Appeals. All the Appeals accordingly, stand dismissed. There will, however, be no Order as to costs.

Sd/-

S. RAJENDRA BABAU

Sd/-

(S.N. VARIAVA)

Hon'ble Supreme Court has observed that undoubtedly the Deposit Collectors are free to regulate their own hours of work but i.e. because nature of work itself. It would be impossible to fix working time of such Deposit Collectors because they have to go to various depositors. This have to be done at the convenience of the depositors and at such time as required by the depositors. If this is so then no time can be fixed for such work. However, there is control as much as the Deposit Collectors have to bring the collections and deposit the same in the bank by the very next day. They have to then fill in various forms, accounts, registers and pass book. They also have to do such other clerical work as the bank may direct. They are, their accountable to bank and under the control of the bank. Hon'ble Supreme Court has further held "Undoubtedly that Deposit Collectors are not regular employee of the bank, but they never the less or worker within the meaning of term as defined in ID Act. There is clearly relationship of master and servant between Deposit Collectors and the concerned bank." The bank has also ruled, that thus no question of absorption and there was no question of Deposit Collectors being paid the same pay scales allowances and other services condition of regular employees of the bank.

The bank has alleged in both the cases that Ravindra Nath and Bhaiya Lallu Singh (hereinafter referred as B.L. Singh) wherein workmen as defined under Section 2(s) of the I.D. Act, 1947 as such the reference is illegal liable to be rejected. Further it has been alleged that both the persons were not paid any wages by erstwhile Benaras State Bank Ltd., they were commission agents in Laghu Bachat Yojna

deposit scheme and were getting 3% commission on the amount of deposit collected as commission agent. They were free to do their work and the work of other company at their sweet will. There was no prescribed time for their work. They were free to work any time or not to work. There was no control and the supervision on the working of these persons. The service rule applicable to the employees of the bank were not applicable to them. There was no master and servant relationship between the workers and erstwhile Benaras State Bank Ltd., Laghu Bachat Yojna was deposit scheme of erstwhile Benaras State Bank Ltd., which automatically ended with the close of the said bank. The amalgamation rules framed by the Reserve Bank of India does not cover the said scheme in the agent of the said scheme therefore Bank of Baroda is not liable to take such agents of the said scheme. The said scheme of Laghu Bachat Yojna has already been closed. The members of public were also notified in respect of the discontinuation of the said scheme by way of notice in daily newspapers. For absorption of these workers, bank is not in a position to introduce such scheme like Laghu Bachat Yojna. The UP Bank Deposit Collectors Association has filed Civil Writ Petition No. 7247 of 2003 before the Hon'ble High Court, Allahabad for the same relief. The present dispute is covered by the above writ petition. Therefore present matter in dispute is subjudice before the Hon'ble High Court as such this Tribunal has no jurisdiction to hear and decide the case.

It is pertinent to mention here that writ petition No. 7247 of 2003 has been dismissed as not pressed on the application of the petitioner. The copy of the judgement is on the record therefore it can not be said that the matter is any mere subjudice before the Hon'ble High Court.

The workers have alleged in their statement of claim that erstwhile Benaras State Bank Ltd. (hereinafter referred as EBSBL) appointed workers as Deposit Collectors in the bank w.e.f. 11-10-79 and 29-1-81 respectively on the terms and conditions given in the letter dt. 11-10-79 and 29-1-81, a true copy of which is filed as Annexure 1 of the statement of claim. It is also alleged that workers served the notice uninterruptedly on payment of regular remuneration as fixed in the terms and conditions. EBSBL was merged with Bank of Baroda vide Govt. notification dt. 20-6-02 and as per scheme prepared by the Reserve Bank of India all the existing workmen of the bank were deemed to be taken as employees of the Bank of Baroda as per their existing terms and conditions. The Bank of Baroda management observed all the workmen but they decided to retrench/terminate workers (Ravindra Nath and B.L. Singh) in arbitrary manner without assigning cogent reason thereof in utter dis-regard to the provision of I.D. Act, 1947 which is applicable to them as well as the management of the bank. Workers were neither given any previlage or benefits nor salary of notice period as prescribed under Section 25(A) and subsequent Sub section thereof under the I.D.

Act. Industrial Dispute in question was agitated by UP Bank Deposit Collectors Association, Ballia against the illegal termination/retrenchment during which the city Magistrate Ballia intervened in the matter and succeeded in impressing upon the management to resolve the dispute amicably within rules and regulations as per I.D. Act to ensure industrial peace in the bank as a whole and in pursuance thereof workers were informed by the management of Bank of Baroda vide letter dt. 25-7-02 that the matter has been referred to the higher authorities and they will be informed suitably after receiving their message in the matter. The copy of the letter dt. 25-7-02 has been annexed as annexure No. 2 to the petition. It is alleged that management of Bank of Baroda have violated the scheme of absorption of all existing workmen/employees of the EBSBL in Bank of Baroda and when after merger w.e.f. 20-6-02 they have taken over the entire assets and liability of EBSBL there is no reason why the worker should not be absorbed and their action is wholly illegal and unjustified and malafid. Earlier the Govt. of India, Ministry of Labour referred the industrial dispute under Section 17A and 10(1) (d) of the Act between the management of various banks for adjudication as to whether the demand of the commission agents or as the case may be deposit collectors employed in the banks are entitled to pay scale, allowances and other service conditions available to their regular employees and if not to what relief for the workmen concerned entitled. After hearing the parties the Industrial Tribunal, Hyderabad passed its award dt. 22-9-1988 that deposit collections were workmen of the concerned bank. This award was upheld by the appeal filed before the Hon'ble High court and also of the Apex court in civil appeal No. 3355 of 1998 of Indian Banks Association vs Workmen of Syndicate Bank and others decided on 13-2-2001. After amalgamation of EBSBL with Bank of Baroda w.e.f. 20-6-02 the assets and liabilities devolved upon the Bank of Baroda and when the deposit collectors have already been deemed as workmen within the meaning of Industrial Dispute Act, 1947 by the Hon'ble Apex court in its judgement dt. 13-2-2001, there is no reason why the present workmen should not have been absorbed in the Bank of Baroda w.e.f. 20-6-02 and granted all benefits and previllages. The action of the management of Bank of Baroda to terminate the services of the workmen on 19-7-02 with a means advertisement in local daily evening newspaper evening terming to be a notification to the members of the public was clearly arbitrary and illegal having been done in utter disregard and gross contravention of the provisions of Section 25(F) of the I.D. Act. In as much as neither any prior notice or pay in lieu of such notice was given nor retrenchment compensation was paid and even no opportunity of hearing was given before taking impugned action against the workmen. A true copy of the newspaper dt. 19-7-02 is enclosed as annexure 3 of the statement of the claim. The workmen have therefore prayed this court to allow the workmen to continue in the bank services as

usual to serve the Bank of Baroda on existing terms and conditions of employment and allow to workmen to avail the benefits and privileges decided by the Industrial Tribunal, for other workmen of the banking industry available from time to time. The workman has also prayed the arrears of wages drawn by the workmen prior their termination till the date of his joining the service.

The Bank of Baroda has dared out in denying the appointment of the workers as deposit collectors as mentioned in the claim petition although they had opportunity to deny specifically. However they have denied paying any wages to admitted that they got commission. The management of the bank has not been able to disclose the commission being paid to the worker. Regarding absorption the management of bank has stated that since the workmen were not in the employment of bank therefore the question of taking them in the employment does not arise at all specially when the Bank of Baroda has no such scheme. It is also alleged that the bank was not violated any provision of I.D. Act, 1947. There is no specific denial of award passed by the Industrial Tribunal, Hyderabad it is submitted that the qualification and mode of selection of very different of agent and regular employees of the bank. Workers can not be absorbed in the bank as regular employee. It will be back door entry in the bank's service. Any person can work as deposit collectors can not work as employee/workman without prior selection. For proper selection of the workmen there is prescribed rules in the bank which has to be complied in all respect. It is submitted that bank has not violated any provision of law and workers is not entitled to any relief whatsoever. There is no post of deposit collectors or there are no scheme of Laghu Bachat Yojna on which the workers may work, therefore the action of bank is just and proper by all means. The workers are therefore not entitled to any relief.

The worker has examined himself and the opposite party has examined Sri Manoj Kumar Gaur a officer of Bank of Baroda.

Heard arguments of the parties and peruse evidence on record.

It is admitted fact that the workers were deposit collectors in Ballia branch of the bank were paid commission on the deposit. Sri Manoj Kumar Gaur has stated that the workmen were working as deposit collectors in the Laghu Bachat Yojna in the EBSBL and the said bank merged with Bank of Baroda w.e.f. 20-6-2001. He has also stated that no such scheme in Bank of Baroda. He has also stated that deposit collectors have the field work and the bank hours are not applicable on the workers.

So called letter of appointment of the workers field by the workers are admitted to opposite party through his witness. Witness of the opposite party stated that the worker Ravindra Nath was sent a notice by registered post

at his residential address but no such notice has been proved. It is also admitted fact that the workers protested by Dharna before the District Magistrate and submitted memorandum which was sent to the higher official. On the other hand workers stated that he was not given any notice and retrenchment compensation. He has also admitted that merger took place on 20th June and Ravindra Nath has stated that he was terminated on 19th July.

On the basis of evidence it is concluded that the worker B.L. Singh was authorized to work as deposit collector w.e.f. 29-1-1981 where as Ravindra Nath was authorised to work as deposit collectors w.e.f. 11-10-79. It is also concluded that as long as there was work of Laghu Bachat Yojna in the EBSBL the workers worked as deposit collectors and on 20-6-02 EBSBL merged with Bank of Baroda.

The relevant extract of the witness of the management Sri Manoj Kumar Gaur in both the industrial disputes cases is reproduced below for ready reference;

"68/03 : पैरा 4 = "बनारस स्टेट बैंक लि. में लघु बचत योजना का कार्य जितने समय तक रहा, रवीन्द्र नाथ डिपाजिट कलक्टर के रूप में कार्य करते रहे, फिर यह योजना बन्द हो गई। 20-6-02 को EBSBL का बैंक ऑफ बड़ौदा में मर्ज हो गया है।"

69/03 पैरा 4 = "बनारस स्टेट बैंक में लघु बचत योजना का कार्य जितने समय तक रहा, बी.एल. सिंह, डिपाजिट कलक्टर के रूप में कार्य करते रहे, फिर यह योजना बन्द हो गई। 20-6-02 को EBSBL का बैंक ऑफ बड़ौदा में मर्ज हो गया है।"

From the above facts it is proved that the worker Ravindra Nath worked from 11-10-79 to the date when the EBSBL was amalgamated in Bank of Baroda i.e. 20-6-02. It is also proved fact from the publication of notice in the local newspaper which is reproduced as under :

पूर्ववर्ती दी बनारस स्टेट बैंक लि. के लघु बचत योजना के सम्बन्ध में

आवश्यक सूचना

"बैंक ऑफ बड़ौदा (पूर्ववर्ती दी बनारस स्टेट बैंक लि.) प्रधान कार्यालय एस-20/52-के, बत्ता ब्रिज कैप्ट, वाराणसी 229002 दि. 25 सितम्बर, 2001 से भारतीय रिजर्व बैंक की जमाधन स्कैकार करने पर रोक लगा दी गई थी तथा भारत सरकार की विज्ञप्ति के अनुसार दि. 20 जून, 2002 से दी बनारस स्टेट बैंक लि. का विलय बैंक ऑफ बड़ौदा में हो गया है।"

बैंक की लघु बचत योजना जो हमारी बलिया शाखा में चल रही थी वह तत्काल प्रभाव से समाप्त की जा रही है।

घनश्याम दास अग्रवाल
आफिसर आन स्पेशल इयटी
बैंक ऑफ बड़ौदा, बलिया

The said publication is notification to public at large that collection in the Laghu Bachat Yojna has been stopped. The representative of the opposite party strongly argued that according to the workers evidence their services were terminated w.e.f. 19-7-02 where as reference to the court for adjudication mentions the termination date as on 19-6-02 and therefore since no termination has been ordered since 19-6-02 therefore the issue be answer against the workers and the representative of the opposite party has filed 2001(89)FLR 360 Hon'ble High Court, New Delhi between Municipal Employees Union and another vs. Secretary Labour of NCT, New Delhi and has argued that this court can not travel beyond the term of reference. It is well settled proposition that the Industrial Tribunal/Labour court can not travel beyond the reference.

The term of reference is unambiguous. It is admitted fact that worker were deposit collectors in EBSBL in Laghu Bachat Yojna scheme and subsequent to Government notification of 20-6-02 the said bank merged with Bank of Baroda. The amalgamation scheme framed by the Reserve Bank of India does not cover the said scheme as such the Bank of Baroda was not liable to take such agents or engage said agents in the Laghu Bachat Yojna scheme. In the circumstances it is evident that the workers were engaged as deposit collectors till 10-6-06 only. In the circumstances the workers automatically stand terminated at the close of the work on 19-6-02. It is for the purpose of notification to the general public at large the advertisement was published in the newspaper on 19-7-06 that Laghu Bachat Yojna is stands closed. In the circumstances aforesaid the date of termination is 19-6-02 only and not 19-7-02. The opposite party management has taken up the plea that the workmen are not workmen and they were free to do their work including work in the company at their sweet will. There was no prescribed time for their work. The workers were free to work at any time or not to work. There was no control and supervision on the working of the workers. The service rule applicable to the employees of the bank were not applicable to the worker. There was no master and servant relationship with the workers and the bank. It is noteworthy that all these pleas were taken before Hon'ble Supreme court and the Hon'ble Supreme court considered all the arguments and came to conclusion that undoubtedly deposit collectors are not regular employee of the bank. But they never the less are workers within the meaning of term and defined in the Industrial Disputes Act, 1947. There is clearly a relationship of master and servant between the deposit collectors and the concerned bank. The Hon'ble Supreme Court further observed that deposit collectors are free to regulate their own hours of work because of the nature of work itself. It would be impossible to fix hour to such deposit collectors because they have to go to various depositors. This would have to be done at the convenience of depositors and at such time as required by the depositors. If this is so then no time can be fixed for

such work. However, there is control as much as the deposit collectors have to bring the collections and deposit the same in the bank by the very next day. They have to fill various forms accounts registers and pass books. They have also to do such other clerical work as the bank may direct. They are therefore accountable to the bank under control of the bank. In the circumstances the plea taken by the opposite party is of no help to the opposite party.

It is not disputed that no notice, notice pay, retrenchment compensation has been given to the workers. The disengagement of the workers as deposit collectors after amalgamation amounts to retrenchment as defined under Section 2(00) which is reproduced below:

2(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include;

- voluntary retirement of the workman; or
- Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

Workers have no right to be absorb in the regular service of the bank as it is clear from the judgment of the Hon'ble Supreme Court. The management of the bank also can not compelled to revive the scheme and to engage them. Workers have put in more than 21 years work as deposit collectors.

The representative of the opposite party has argued that the workers has failed to prove that they have worked continuously 240 days before their retrenchment. It is admitted to the bank that no attendance was marked in respect of workers. The witness of the opposite party has not stated that the workers having completed 240 days prior to his disengagement. On the contrary witness has admitted that as long there was work available for the workers they continued to work. The opposite party has stated in the written statement that the worker never worked regularly. The nature of work is detailed in the judgment of Hon'ble Supreme Court and workers engagement for long 20 years keeping in view the nature of work, it can not be said that worker has not worked 240 days continuously preceding the date of disengagement. During the course of argument on 4-4-06 the parties were directed to produce payment chart in respect of agency commission. On 18-4-06 the opposite party wanted time, on the ground that old records are being searched. Similarly on 16-5-06 the opposite party demand time. The opposite party was allowed time but opposite party did not file any payment chart. On 12-9-06 the representative of the worker stated that worker has been able to find out the record from the bank about commission which he filed along with affidavit C-33. The opposite party was allowed 15 days time to file counter

affidavit and 29-9-06 was fixed for argument but opposite party's representative did not file any counter affidavit. On 20-8-06 counter objection filed but no counter affidavit was filed. The worker Revindra Nath has stated his affidavit that court directed the employee to furnish the documents in relation of the commission to the workers but inspite of adjournment no such documents could produced on behalf of the employer and in the circumstances it is believe that although relating to the record of commission paid for the period 8-2-2000 to 9-10-2001 is available with the opposite party but they are deliberately not making the production of the same for perusal of this court. However relevant ledger of SB Ledger folio 474/10 and a/c 2410 was shown to the applicant the details of which were noted by him which are furnished in the statement filed as Annexure 1 to the affidavit according to which deponent received the commission of Rs. 1,56,461 during the said period of 12 months and as per average he received Rs. 13,038 per month as commission. The statement of Ravinda Nath goes to show that following commission on the dates were credited to his account as is evident from C-34, which is reproduced below;

**RAVINDRA NATHS/o Shri Baij Nath Prasad Received
commission dt. 8-8-02 to 9-10-01**

S.I. No.	Date	L.B.Y. Com.	C.R. Com.
1.	08-08-2000	"	11722
2.	07-09-2000	"	10700.00
3.	04-10-2000	"	9500.00
4.	06-11-2000	"	10988.00
5.	20-12-2000	"	12457.00
6.	04.01.2001	"	12181.00
7.	07-02-2001	"	14967.00
8.	05-03-2001	"	13112.00
9.	11-04-2001	"	12792.00
10.	03-07-2001	"	11536.00
11.	07-09-2001	"	25326.00
12.	09-10-2001	"	11180.00
12 Month		Grant Total	156461.00

In the counter objection the representative of the opposite party stated that Annexure 1 of affidavit of Ravindra Nath has not worked after 9-10-01 therefore the date of alleged termination of the worker Ravindra Nath is disputed. Therefore the entire matter is misconceived and can not be adjudicated as the same is liable to be dismissed. Worker has replied the said counter objection by filing additional counter affidavit C-30 alleging opposite party is deliberately not producing the relevant record from the perusal of the court and now they have chosen to utilize those documents by filing objection dt. 20-10-06 but twist the real fact and to allege that the workmen had not worked

beyond 9-10-01 in the said bank and also that between 19-7-01 to 19-7-02 in preceding 12 months from the date of alleged termination the workmen had worked for 80 days only and not 240 days, so as to held him disentitled the retrenchment/termination although according to the decision of the Hon'ble Supreme Court the deposit collectors have already been declared as workmen of the concerned bank. It is also not disputed that Government of India notification referred to in the notice published in the newspaper on 19-7-02 contained in Annexure 3 to the claim statement the EBSBL was merged with Bank of Baroda w.e.f. 20-6-02. According to the balance book ledger book 1990-91 of ledger of the said bank the deponent has prepared statement in his handwriting upto 30-6-02 and thus he had continued to work in EBSBL interruptedly till 30-6-02 although later on subsequently by notice published in the news paper on 19-7-02 the deponent was informed that said bank has been merged with Bank of Baroda w.e.f. 20-6-02.

Similarly B.L. Singh has also filed affidavit and the photo copy of ledger were in worker has Table C-34 showing the amount of commission received by him, table is reproduced below:

Saving Bank Account No.2921 L.F.471/8

Name : B.L. Singh S/o Sri Bhaiya Param Hansa Singh
Received commission at. 10-11-2000 to 3-10-2001

Date	L. B. Y. Com.	Amount Rs.
10-11-2000	"	8,670.00
08-12-2000	"	7,24.00
02-01-2001	"	8,362.00
01-02-2001	"	8,410.00
07-03-2001	"	8,855.00
11-04-2001	"	9,211.00
11-05-2001	"	7,687.00
06-06-2001	"	7,379.00
12-07-2001	"	10,056.00
14-08-2001	"	7,657.00
13-09-2001	"	8,635.00
03-10-2001	"	7,110.00
12 Month	Grand Total	99,756.00

Total commission received dt. 10-11-2000 to 3-10-2001

Total Rs. 99,756.00

Average as per month commission Rs. 8,312.00

EBSBL also filed additional Affidavit along with copy of balance statement paper No. 36/6. On the basis of evidence on the record it is proved that the workers have worked for more than 20 years right from their inception as deposit collectors till Laghu Bachat Yojna ended and the

worker has been terminated thereafter without paying due compensation and notice, notice pay in lieu of notice. The witness of the opposite party has not stated in the statement that the worker has not completed 240 days before his termination. All the records of EBSBL must have been in the hands of Bank of Baroda immediately after merger and the bank was duty bound to preserve those records to prove that the worker has not worked for 240 days. Since the attendance is not marked and the nature of works was such which requires him to attend the field work and the office of the bank, both, therefore it can not be said that the worker has not worked for 240 days continuously.

In the case law referred in the reference Order the Tribunal directed as follows :

"All those Deposit Collectors and Agents who are below the age of 45 years on 3-10-80 (the date of the first reference of this industrial dispute) shall be considered for regular absorption for the post of Clerks and Cashiers if they are matriculates and above including qualified Graduates and Post Graduates. They may be taken to Bank serviced as regular employees if they pass the qualifying examinations conducted by the Banks. Those who are absorbed shall be treated on par with regular clerical employees of the Bank. Those who are qualified with 8th class and below matriculations shall be considered for absorption as sub-staff by conducting qualifications examination.

As regards the Deposit Collectors and Agents who are above 45 years of age on the date 3-10-1980 and also those who are un-willing to be absorbed in Regular Banks service they shall be paid the fall back wage of Rs. 750.00 per month and they should be paid incentive remuneration at 2% for collection of over and above 7500.00 per month and they should also pay uniform conveyance of Rs. 50.00 per month for deposit of less than Rs. 10,000.00 and Rs. 100.00 per month for deposit of more than Rs. 10,000.00 upto or above Rs. 30,000.00 per month they should be paid Gratuity of 15 days commission for each year of service rendered."

Various writ petitions were filed by various Banks and the Indian Banks Association. All were disposed off by the impugned judgment dt. 20th March, 1997.

Before the High Court it has been conceded that relief of being absorbed as regular staff of the banks in clerical cadre was not available to be granted. On this concession the High Court set aside the directions of the Tribunal to absorb the Deposit Collectors as regular staff. The High Court however upheld the other directions of the Tribunal regarding payment of full back wages, conveyance allowance gratuity etc.

Industrial Disputes Act, is a social welfare legislation the workers have worked as deposit collectors for more

than 20 years and the workers ought to have been compensated by payment retrenchment compensation and notice pay. It is immaterial whether the worker is a regular or otherwise, the employer is duty bound to following provision of Section 25-F of the Industrial Disputes Act., which is reproduced below :

25-F: Conditions precedent to retrenchment of workmen :

No. Workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government (for such authority as may be specified by the appropriate Government by notification in the Official Gazette).

In the present case this undisputed as it is evident that the service of Deposit Collectors which were present workmen were dispensed with as a result of merger of erstwhile Banaras State Bank Limited with Bank of Baroda vide Government notification dated 20-6-2002 w.e.f. 19-6-2002. It is also evident that the scheme in which the workmen were engaged is no longer exist. As a model employer the bank management must have complied with the provisions of section 25 F of the Industrial Disputes Act. 1947, but the management has not done so. Even after the pronouncement of judgment the bank management took all those plea which were considered by the Hon'ble Apex Court. Instead acting on the judgement of the Apex Court, dated 13-2-2001, the management of the Bank took all those plea again. The present workmen are the workmen, as decided by the Hon'ble Supreme Court. The termination of these workman without complying the provisions of section 25 F is unjust, illegal.

Now the question is what relief these workmen are entitled for ?

The workman Ravindra Nath has worked as Deposit Collector from 11-10-1979 to 19-6-2002 (roughly for 22 years 8 months). Commission chart has not been made available by the employer. whatever is made available, has been made available by the worker which shows that Shri Ravindra Nath has earned Rs. 1,56,461 in 12 months from 8-8-2000 to 9-10-2001. It is safe to take the basis for computing compensation. Average per month commission is Rs. 13038. The average 15 days commission is worked out to be

Rs. 619. For every complete year 15 days commission is to be multiplied by 22 years i.e. $6518 \times 22 =$ Rs. 1,43,418. Since the worker has worked for 8 months more, therefore, the amount of compensation shall be Rs. 1,43418/- + 6519/- = Rs. 1,49,937. Since the notice pay has to be given therefore, one month's commission has to be added with the above amount which comes out to be Rs. 1,49,937/- + Rs. 13038 = Rs. 1,62,975. Workman Bhaiya Laloo Singh has worked from 29-1-1981 to 19-6-2002 (roughly 21 years 5 months). The commission chart has not been made available by the employer, whatever is made available, has been made available by the worker which shows that Shri Bhaiya Laloo Singh has earned Rs. 99,756 in 12 months from 10-11-2000 to 3-11-2001. It is safe to take this as basis for computing compensation.

Average monthly commission comes out to be Rs. 8312. The average 15 days commission is worked out to be Rs. 4156. Since the worker has worked for 21 years, therefore, compensation, if calculated, it shall be $4156 \times 21 =$ Rs. 87,276. One month's notice pay shall be Rs. 8312, if added to the above amount, shall be Rs. 95,588 as the workers were not given any notice.

Thus, worker Shri Ravindra Nath was entitled to the Compensation of Rs. 1,62,975 and Bhaiya Laloo Singh is entitled to Compensation of Rs. 95,588. The said amount was to be paid on 20-6-2002, but, the workers were not paid, therefore, the workers are entitled to the aforesaid compensation along with compound interest @ 9% per annum (compounded annually) till the amount is paid. Award passed accordingly in the favour of the workmen.

Lucknow

21-3-2007

SHRIKANT SHUKLA,
Presiding Officer

नई दिल्ली, 30 मार्च, 2007

का.आ. 1130.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, पंजाब, नेशनल बैंक के प्रबंधत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ त्रिम न्यायालय नं.-2, नई दिल्ली के पंचाट (संदर्भ संख्या 176/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/76/99-आई.आर.(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1130.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 176/1999 of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, New Delhi as shown in the Annexure, in the

Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 30-3-2007.

[No. L-12012/76/1999-IR (B-II)]

RAJINDER KUMAR, Desk Officer
ANNEXURE

**BEFORE THE PRESIDING OFFICER:
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT II
NEW DELHI**

I.D. No. 176/1999

PRESIDING OFFICER : R. N. Rai

PRESENT :

Shri I.B. K. Kohli	:	1st Party
Shri Ashwani Sharma	:	2nd Party

In the matter of :—

Shri I.B. Kohli,
S/o Late Shri M.D. Kohli,
R/o C-4-C/145, Janak Puri,
New Delhi-110 058.

Versus

The Regional Manager,
Regional Office,
Punjab National Bank,
Atma Ram House,
New Delhi.

AWARD

The Ministry of Labour by its letter No. L-12012/76/99-IR(B-II) Central Government Dt. 6-7-1999 has referred the following point for adjudication.

The Point runs as hereunder :—

"Whether the dismissal of Sh. I.B. Kohli, Special Assistant from service w.e.f. 16-2-93 by the Punjab National Bank, Head Office, Bhikaji Cama Place, New Delhi, is justified and legal? If not, what relief the workman Sh. I.B. Kohli is entitled to and from what date."

The workman applicant has filed claim statement. In the claim statement it has been stated that the workman was employed with the New Bank of India by the Managing Director of the erstwhile Bank, New Bank of India at the post of Special Assistant after having been appointment on 1-8-1962.

That the workman diligently discharged his duties with the said erstwhile Bank at various assignments/positions from time to time to the entire satisfaction of the immediate senior officers of the said bank where he was posted until 16.2.1993 when he was illegally dismissed from service.

That during the tenure of employment of the workman since 1962 he was never even censured, reprimanded or any kind of adverse remarks about his work and his conduct by his immediate superiors under whom the workman had the opportunity or serving the Bank with utmost hard work, due diligence, and work to the best of the ability of workman.

That in the year 1990 when at the instance of certain colleagues of the workman who illegally instigated the Management against the workman for committing fraud with the bank by tampering the records and a false and frivolous case under Section 20/468/471 I.P.C *vide* F.I.R. No. 772/90 has been falsely got registered with the police, P.S. Parliament Street which case is still pending before the Court of Mrs. Kaur M.M. Patiala House, New Delhi, on the said false prosecution of the workman.

That the Bank Management in order to dismiss the workman and to wash their hands hurriedly instituted an inquiry proceedings against the workman without affording adequate reasonable opportunity to the workman, the humble workman was dismissed illegally in an arbitrary manner and against the law on the ground as under :—

That the impugned dismissal order dated 16-2-1993 passed by the A.G.M. of the Management is without jurisdiction having got been passed by the appropriate competent lawful authority, and the said officer, has been below the rank of appointing authority, i.e. Chairman, hence the said dismissal order of the workman passed by other than the appointing authority of the workman is absolutely illegal, unwarranted, unconstitutional and is without the jurisdiction and is liable to be set aside and the workman reinstated with full back wages with all consequential benefits.

That the order of the dismissal of the workman is base of surmises and conjectures and is passed in an arbitrary manner utmost haste without affording due adequate reasonable opportunity of being heard the workman and the order of the dismissal of the humble workman is therefore biased and absolutely illegal and is not sustainable in any manner whatsoever, the finding of the enquiry officer suffered from various irregularities as well as illegalities.

That the Bank Management did not consider earlier request as well as representations of the humble workman with regard to his absolute innocence and the illegal verdict of his alleged offence is yet to be decided by the competent court of law where the said case is still pending and the prosecution side has not provided the documents so required by the workman till date as the case was registered at the instance of the Bank Management *vide* F.I.R. No. 772/90 and before the guilt of the workman is established the humble workman cannot be punished by way of dismissal of his services without any sufficient cause or

reasons thereby throwing him on the road to collapse along with his family members including his minor children, and there is no other source of income of humble workman to feed his family and provide them bread of loaf, whereas the Bank Management is knowing fully well the alleged circumstances of the humble workman have caused calculated hardship to him.

That the humble workman was a permanent employee of the management with his regular services rendered by him which are more than 28 years and on the basis of his illegal dismissal of service, he has not been paid even a single penny towards the service benefits like gratuity, pension, leave with wages or leave encashment, provident fund, bonus, L.T.C. etc. and thereby caused great hardship to the workmen due to his illegal dismissal without applying their legality of mind and the provision of para 6 B to para 6 E of the First Bipartite settlement applicable to the workman is quite unjust and is of no valid reasons. Even so much so the Management did not settle the wages of the workman for the period he worked with the management and usurped the wages for the said period without any reasonable cause or excuse.

That the dismissal of the workman from his service is also absolutely illegal on the basis of Cock & Bull story and cooked up alleged charges against the humble workman and his guilt is yet to be proved in the Competent Court of law where the Bank Management had filed case *vide* F.I.R. No. 772/90.

That the humble workman tried his level best and appointed the Management of the Bank through his repeated requests and reminders to reconsider his illegal dismissal and to reinstate him in service with consequential benefits but of no avail and lastly on 12-05-1997 refused to reinstate him on his duty.

That the humble workman being aggrieved of the blanket refusal of the Management having been left with no other efficacious remedy except approaching this Hon'ble Court to seek justice for his reinstatement with all consequential benefits, as the dismissal is absolutely illegal, arbitrary, capriciously, malafide, unwarranted and unsustainable in the eyes of law and dismissal order be set aside with all consequential benefits.

In view of above facts and circumstances it is therefore most respectfully prayed that this Hon'ble Court may be pleased to set aside the illegal dismissal order of the humble workman.

The Management has filed written statement. In the written statement it has been stated that it is stated that the initiation of disciplinary proceedings against the concerned workman was on account of his alleged involvement in the fraud committed by him in the Savings Fund Accounts at BO: Janpath, New Delhi of ENBI amalgamated with PNB *vide* Govt. of India Notification dated 4-9-93, hence the said dispute has been now raised against PNB.

At the outset, we would like to raise certain preliminary objections before going into the merits of the case.

That it is submitted that Shri Kohli was inflicted punishment of dismissal from the service of the Bank by the disciplinary Authority *vide* order dated 16-2-93 and his appeal was also dismissed by the Appellate Authority. However, Shri Kohli raised the so-called dispute before the Assistant Labour Commissioner (New Delhi) after the lapse of over four years and the appropriate Government has referred the so called dispute after a lapse of over six years. The Hon'ble Supreme Court in the case of Nedungadi Bank Limited Vs. I.O.P. that, in case the matter is raised after a lapse of seven years, then it cannot be said that any industrial dispute exists or is apprehended. In view of this, it is respectfully submitted that the present so called dispute raised by Shri Kohli merits no consideration.

Shri I.B. Kohli working as Special Assistant at BO: Janpath of erstwhile New Bank of India was placed under suspension *vide* orders dated 26-12-90 for his alleged involvement in the fraud committed by him in the Saving Fund accounts at the said branch. An FIR was also lodged with the police authorities on 25.10.90. Subsequently, he was served with charge-sheet dated 9-4-91 in having embezzled bank's funds to the tune of Rs. 10,64,120.00 amongst other charges.

He cheated the Bank by forging/tempering/over writing the Bank's records/documents for pecuniary gains for himself and family members. He abused his official position for personal gains.

He was engaged in the business of buying of commercial immovable properties for earning profits, which was outside the scope of his official duties.

He was negligent in performing his official duties in as much as that he misappropriated Bank's funds to the tune of Rs. 10,64,120.00 immensely whereby he acted prejudicially to the interest of the Bank intentionally and caused a huge loss etc.

Shri Kohli submitted his reply dated 14.08.91 denying all the charges and as such it was found appropriate to hold an enquiry to find out the truth. An Enquiry Officer was appointed who conducted the enquiry during which he afforded reasonable opportunity to Shri Kohli to place his defence viz. allowing him to be represented by a defence representative, to have access to the related records and documents produced during the enquiry, to cross examine the management witnesses, to produce witnesses in defence etc. The Enquiry Officer submitted his findings dated 29-10-92 wherein all the charges were found established. Shri Kohli was given another opportunity *vide* letter dated 30-10-92 wherein he was asked to make submissions towards the findings submitted by the Enquiry Officer. Shri Kohli submitted his reply which was considered by the Disciplinary Authority alongwith the findings of the Enquiry Officer and material placed on

enquiry record and vide show cause notice dated 4-1-93 the Disciplinary Authority proposed the punishment of dismissal on 20-1-93. Shri Kohli appeared for the personal hearing wherein he repeated his pleadings, which were already placed by him before the Enquiry Officer. Finding that Shri Kohli has not placed any fresh ground which could call for any amendment in the proposed punishment of dismissal without notice *vide* orders dated 16-2-93 benefits monetary or otherwise for the suspension period except for the subsistence allowance already paid to him.

Shri Kohli had preferred an appeal to the Appellate Authority, which was also dismissed. However, erstwhile New Bank of India was amalgamated with Punjab National Bank *vide* Government of India notification dated 4-9-93 and hence the said dispute has been now raised against the PNB.

In view of the aforesaid, it is respectfully submitted that disciplinary action has been taken against Shri Kohli after following the procedure prescribed under the provisions of the Bipartite Settlement and the punishment inflicted upon Shri Kohli is commensurate with the gravity of the allegations established against him and accordingly. It is submitted that the action of the Bank in inflicting the punishment the punishment is appropriate, legal and justified.

Further, it is the submission of the Bank that the departmental enquiry against Shri Kohli is fair and proper. However, in case the Hon'ble Tribunal comes to the conclusion that the departmental enquiry conducted against Shri Kohli is bad for any reason whatsoever, in that eventuality the bank would crave leave to lead evidence before the Tribunal to establish the allegations made against Shri Kohli *vide* charge sheet dated 09.04.1991.

The contents of para 2 of the claim are admitted to the extents that Shri Kohli was posted in the different branches of erstwhile New Bank of India from time to time. He was served with charge sheet dated 09.04.1991 for various charges as mentioned hereinabove and punishment of dismissal inflicted upon Shri Kohli by the Disciplinary Authority, is in accordance with the provisions of the Bipartite Settlement. It is denied that he performed the duties upto the satisfaction of the superiors.

The contents of Para 3, 4 and 5 as stated are wrong and denied. It is submitted to the extent that Shri Kohli was appointed in the services of erstwhile New Bank of India with effect from 01.08.62. However, as already stated above, he not only engaged himself in outside employment as well as tampered the Bank's records for his personal interest. He embezzled Bank's funds to the tune of Rs. 10,64,120.00 which charge were subsequently also found established. It goes to show that the work and conduct of Shri Kohli was not satisfactory. It was in terms of the service conditions applicable to him that erstwhile New Bank had taken disciplinary action in accordance with the provisions

of the Bipartite Settlement. In compliance of the principles of natural justice, he was given reasonable opportunity to defend himself and thereafter only when it was observed that all the charges leveled against him are proved he was dismissed from the Bank service. It would be pertinent to add here that Bank's are sensitive financial institution wherein public entrusts its hard earning money by way of deposits etc. It is important that the conduct of the employees has to be above board so that public can have its confidence in them by embezzling a huge amount of Rs. 10,64,120.00 which was found established by a fair and proper enquiry, bank had lost its confidence reposed upon him. Hence, it was prudent for the bank to dismiss him from bank's service, which was in the interest of the bank as well as in the interest of the public at large.

Bank would like to rebut the grounds numbered as (a) to (g) in the statement of claim as under :

The ground No. (a) as stated is wrong and denied. In terms of Chapter 19 of Bipartite Settlement the Principal Officer of erstwhile New Bank of India had delegated the powers of taking disciplinary action against the employees by appointing various authorities, which was circulated vied erstwhile New Bank of India Head Office Circular Reference No. IRD: CIR : 21 : 81 dated 3-9-81. In the said circular it was provided that regional head is empowered to take disciplinary action and pass original orders in respect of workmen staff posted in branches/sub-offices. In the instant case Shri Kohli was posted at BO: Janpath from where he was placed under suspension and Assistant General Manager being the Regional Head of Regional Office, Delhi of erstwhile New Bank of India under whose administrative control BO: Janpath was functioning had passed orders dated 16-2-93 as disciplinary Authority. Hence it is totally wrong on the part of Shri Kohli to state that the Assistant General Manager, Regional Office, Delhi of erstwhile New Bank of India had passed the dismissal orders dated 16-2-93 without jurisdiction and authority.

The ground No. (b) as stated is wrong and denied. It is again submitted that the enquiry was held in accordance with the provisions of the Bipartite Settlement wherein he was given reasonable opportunity to defend himself; Punishment inflicted is commensurate with the gravity of allegations established against Shri Kohli.

The contents of ground No. (c) as stated are wrong and denied. It may be stated that the police authorities have not filed a chargesheet in the trial court. The relevant provisions of Chapter 19 of the Bipartite Settlement are appended :

When in the opinion of the management, an employee has committed an offence unless he is otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted and in such a case he may also be suspended. If after steps have been taken to prosecute an employee or to get him prosecuted,

for an offence, he is not put on trial within a year of the commission of the offence, the management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct" as defined below; provided that if the authority which was to start prosecution proceedings refuses to do so or come to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in Clauses 19.11 and 19.12 infra relating to discharge, but he shall deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding after enquiry, not to continue him in service, he shall be liable only for termination within three months. Pay and allowances in lieu of notice as provided in Clause 19.3 supra. If within the pendency of the proceedings thus instituted he is put on trial such proceedings shall be stayed pending the completion of trial after which the provisions mentioned in Clause 19.3 above shall apply.

It would be observed that in terms of Para 19.3 (a) that when a workman commits an offence, Bank can take steps to get him prosecuted. Further, Para 19.4 states inter alia that where the criminal trial does not commence within one year of the steps taken by the Bank to get the employee prosecuted, it is open to the Bank to proceed departmentally against him. In the instant case, it is admitted that Bank did lodge an FIR with the police authorities but since no charge-sheet was filed by the police authorities in the trial court, it was open to the Bank to proceed against him departmentally. Accordingly, disciplinary action was proceeded with against Shri Kohli to state that when the offences are not established in the court of law, he cannot be punished. Bank has taken action in accordance with the provisions of the Bipartite Settlement, which are binding on him.

The contents of ground No. (d) as stated are wrong and denied. It is only the PF dues of the subject, which have not been settled for the reason that certain queries have been raised by the Provident Fund Department of our Bank with regard to payment of Banker's contribution to Provident Fund in respect of Shri Kohli.

It is stated that Shri Kohli also availed PF non-refundable loan of Rs. 20,000.00 on 16-5-84 which including interest is to be deducted from the employees contribution at the time of settlement of dues. He also availed the refundable PF loan, which is showing balance of Rs. 40,704.31 as on September 1998. Besides the above, the following dues are also recoverable from Shri Kohli :

Personal loan - - Rs. 10,512.07 plus recorded interest of Rs. 2599

Consumer Loan — Rs. 8014.00 recorded interest of
Rs. 1,978.00

Besides, he has also availed Housing Loan of Rs. 70,000.00 at BO: Darya Ganj the outstanding balance payable by Shri Kohli is Rs. 55,568.00 plus recorded interest up to 31-3-99 being Rs. 9,09.00.

The ground No. (e) is not admitted being far from the facts.

The facts as given in the proceedings paras are reiterated.

That the contents of Para 5 (f) as stated are wrong and denied. It is submitted that Shri Kohli has been dismissed from the service of the Bank by the Disciplinary Authority in accordance with the provisions of Bipartite Settlement and his appeal before the Appellate Authority was also rightly rejected. In view of this, it is submitted that the representation, if any, made by Shri Kohli as submitted in Para under reply were wholly misconceived and do no merit any consideration.

The ground No. (f) and (g) as stated are wrong and denied. However, the facts given hereinabove are reiterated. It is once again stated that in view of the charges found established by way of a fair and proper enquiry, it was justified on the part of the Bank to dismiss an employee who has embezzled the Bank's fund to the extent of Rs. 10,64,120.00 besides committing other serious charges such as tampering of records, misuse of official position.

That in view of the submissions made hereinabove, it is respectfully submitted that his Hon'ble Tribunal may kindly be pleased to hold that the action of the bank in dismissing Shri Kohli with effect from 16-3-93 is lawful and justified and that Shri Kohli is entitled to any relief as prayed for or otherwise. It is further submitted that keeping in view the nature of allegations established against Shri Kohli in the duly conducted departmental enquiry, the Bank has lost confidence in Shri Kohli and for this reason also he is not entitled to the relief of reinstatement in service or otherwise.

The workman applicant has filed rejoinder. In his rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard arguments from both the sides and perused the papers on the record.

It was submitted from the side of the workman that an FIR No. 772/90 was lodged with the Police at the instance of the bank. The trial of the workman is still pending in a competent court of law. In the meantime, the management conducted an illegal inquiry on the basis of cock and bull story and cooked up alleged charges against the workman. His guilt is yet to be proved in a competent court of law.

The workman has been illegally and arbitrarily dismissed by the bank w.e.f. 16-2-1993. The inquiry is absolutely illegal as principles of natural justice have not been observed. The workman was not given defence assistant to cross-examine the management witnesses. He was kept outside the inquiry room and his signature was thereafter obtained. The inquiry proceedings are vitiated and the dismissal order passed by the management is illegal. The workman has not been provided defence assistant to cross-examine the witnesses. No opportunity was provided to him to adduce his defence evidence. He is not entitled to disciplinary action under the provisions of BPS.

It was submitted from the side of the management that the workman has embezzled an amount of Rs. 10,64,120 of the Bank's fund accounts of different customers while he was posted as Special Assistant at Branch Office Janpath.

It was further submitted by the management that the trial did not commence within one year of lodging of FIR, the management proceeded departmentally against the workman as under Para 19.3(a) of the BPS, where a criminal trial does not commence within one year steps may be taken by the bank to get the employee prosecuted. It is open to the Bank to proceed departmentally against the workman. The trial in this case did not commence within one year of lodging of FIR, so the inquiry was conducted in view of Para 19.3 (a) of the BPS. It was further submitted that the workman was given ample opportunity to cross-examine the witness and he did cross-examine MW-5, Shri M. L. Bhambri, Shri R. C. Kasturia, Accountant, MW-6, Shri S. K. Goel, Sr. Manager. The workman did not opt to cross-examine the other witnesses and the Inquiry Officer has recorded this thing during the inquiry proceedings. The workman was given ample opportunity to cross-examine all the management witnesses.

It was further submitted that the workman was given sufficient opportunity to produce evidence in his defence. He wanted to examine Smt. Shashi Chadha and Shri Yogeshwar Prasad. These two witnesses did not turn up on the dates of inquiry. The workman said on 12-9-1992 that he has no objection, if the inquiry proceedings are closed, so the inquiry proceedings have been concluded at the instance of the workman.

It was further submitted that the workman never requested for providing him defence assistant. The delinquent himself cross-examined the witnesses at length.

It was further submitted that the Disciplinary Authority is the competent authority to impose punishment of dismissal on the workman.

It becomes quite obvious from perusal of the inquiry report that the management has examined these witnesses. The three witnesses have been cross-examined in great detail. The workman did not opt to examine the other witnesses. It also becomes quite vivid that all the

management witnesses have brought records in which forgery was committed. The workman has tampered and forged the documents.

It is not necessary to narrate all the SB accounts which have been tampered with and the workman has committed embezzlement. The workman for instance gave credit entries to account no. 3344, 3399, 46890, 44990, 41690. He was in the habit of making false credits and thereafter he fraudulently withdrew the amounts of fake entry. He embezzled a sum of Rs.2,54,120/- from SB A/c No. 3129 by making several fictitious credit entries and withdrew the same.

It was further submitted that he withdrew an amount of Rs.5,00,000/- from SB A/c No. 3798. He made fake entry of Rs.3,00,000/- for SB A/c No. 3873 and withdrew the entire amount on several dates. In the B A/c No. 2758 the workman made fake entry of Rs. 1,10,000/- and tampered the ledger sheet and withdrew the amounts of fake credit.

It further transpires from the inquiry report that the management has examined the accountants of the accounts from which he has embezzled the amounts on several dates. Thus, the forgery of the workman stands proved by the witnesses examined by the management.

The management can initiate Disciplinary Proceedings in case the trial is not started within one year of the lodging of the FIR. In the instant case the trial did not start within one year of the lodging of the FIR, so the management is competent to initiate the disciplinary proceedings against the workman under P 19.3(a) of the BPS. There is no merit in this argument.

In case a workman requires the help of defence assistant, he should have applied for the same. There is no such application in the inquiry proceedings. He has cross-examined 3 witnesses at length out of 6 witnesses. He did not opt to cross the other witnesses. So all the witnesses shall be deemed to have been cross-examined by the workman himself. He cannot take the plea of having not been permitted to engage defence assistant when he has not made such requests. The workman thought himself competent so he cross-examined the witnesses. He cannot take the plea of non-providing of the defence assistant after disciplinary proceedings are concluded.

The workman has signed all the proceedings of the inquiry. There is no merit in the contention that he was kept outside the inquiry room and his signature thereafter was obtained. If it was so, how did he cross-examine the 3 witnesses at length. This plea is also false. The inquiry proceedings were conducted in the presence of the workman. He signed the inquiry proceedings on every date and he cross-examined all the witnesses.

The workman has been given sufficient opportunity for adducing defence evidence. The employee whom he wanted to examine as defence witness did not turn up on many dates and the workman has himself stated that he

has no objection in case inquiry proceedings are concluded. So he has been given ample opportunity to adduce defence evidence. From perusal of the inquiry proceedings it appears that voluminous documents regarding forgery were produced before the Inquiry Officer and the witnesses have consistently stated that the workman has misappropriated the amounts of several accounts by giving fake credit entries to those accounts and by fraudulently withdrawing the same. Thus, principles of natural justice have been observed during the inquiry proceedings.

I have perused the findings of the inquiry report. The findings are based on the analysis of the evidence adduced in the inquiry. The findings cannot be said to be perverse. The Disciplinary Authority is the competent authority to inflict the punishment of dismissal.

From perusal of the evidence in the inquiry and the findings of the Inquiry Officer and order of Disciplinary Authority and Appellate Authority, it becomes quite obvious that the charges against the workman have been rightly held proved. The integrity of bank employees should be above board as they deal with public money. The CSE has embezzled the amount of above Rs.10 Lakhs on various dates by opening fake accounts and by making fake entries and by tampering the bank's records. Principles of natural justice have been observed. The inquiry is not defective. The findings of the Inquiry Officer are correct. The Disciplinary Authority and the Appellate Authority have passed order after proper application of their mind. The law cited by the workman are not applicable in the facts and circumstances of the present case. He is not entitled to get any relief as prayed for.

The reference is replied thus :

The dismissal of Sh. I. B. Kohli, Special Assistant from service w.e.f. 16-2-93 by the Punjab National Bank, Head Office, Bhikaji Cama Place, New Delhi, is justified and legal. The workman applicant is not entitled to get any relief as prayed for.

Award is given accordingly.

Date : 28-3-2007.

R.N. RAI, Presiding Officer

नई दिल्ली, 30 मार्च, 2007

का.आ. 1131.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, नई दिल्ली के पंचाट (संदर्भ संख्या 6/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-3-2007 को प्राप्त हुआ था।

[सं. एत-12012/188/2004-आई.आर. (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1131.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of Vijaya Bank and their workmen, which was received by the Central Government on 30-3-2007.

[No. L-12012/188/2004-IR (B-II)]

RAJINDER KUMAR, Desk Officer
ANNEXURE

BEFORE THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NEW DELHI

Presiding Officer : R. N. Rai

I. D. No. 6/2005

Present : Sh. Naresh Kr. Joshi —1st Party
Sh. Avinash Kr. —2nd Party

In the matter of:—

Shri N. Shivaswamay,
G-69, 4th Floor,
Opposite Rani Koti,
Gautam Nagar, New Delhi,
New Delhi-110 001.

Versus

The Dy. General Manager,
Vijaya Bank,
Zonal Office at Vijaya 3rd Floor,
17, Barakhamba Road,
New Delhi-110 001.

AWARD

The Ministry of Labour by its letter No. L-12012/188/2004-IR (B-II) Central Government dt. 11-01-2005 has referred the following point for adjudication :

The point runs as hereunder :—

“Whether the action of the Vijaya Bank in terminating the services of the workman Shri N. Shivaswamay, Ex. Temp. Peon is just, fair and legal ? If not, to what relief the workman is entitled to and from which date.”

The workman applicant has filed statement of claim. In the statement of claim it has been stated that the workman was registered with the Employment Exchange, Curzon Road, New Delhi as defined under the Industrial Disputes Act, 1947. The workman was appointed as Peon on 14-1-1995 with the Vijaya Bank on temporary basis in its Hi-Tech Agricultural Branch at Delhi. The said temporary vacancy had arisen in the sub-staff category due to increase in the workload. The copy of the appointment letter dated 14-1-1995 issued by the Vijaya Bank is annexed hereto and

marked as Annexure A-1. That the workman joined duty at its branch on 8-2-1995 and submitted his joining report to the Vijaya Bank. The copy of the joining report dated 8-2-1995 is annexed hereto and marked as Annexure A-2.

That initially, from time to time, the services of the workman were extended by issuing fresh communications. Such communications of Vijaya Bank arbitrarily stipulated periods varying from 30 days to 2 months. While this being the position, significantly, there has not been a break of even a single day till date from the date of his appointment. Such communications were deliberately issued in order to make it appear as if the requirement was temporary. Initially this was being done to circumvent the mandatory 240 days period, which would entitle the undersigned to regularization. Copies of which are annexed hereto and marked as Annexure A-3 (Colly). The workman's continuity in service was deliberately made erratic in order to circumvent the mandatory 240 days period and deny the consequential service benefits, which the workman would have been entitled to. Thus, the workman performed his functions as a peon on substantive basis.

That after the communication dated 31-7-1996, the Vijaya Bank did not issue any further extensions. Significantly, even in the absence of any such extention by the Vijaya Bank, the workman continued to work as a Peon in the Hi-Tech Agricultural Branch.

That the branch, in which the workman was working, was closed by the Vijaya Bank. Thereafter the Vijaya Bank issued a communication to the Sr. Branch Manager of the Hi-Tech Agricultural Branch instructing the said branch to relieve the workman and asked him to report for duty at Vijaya Bank, Hauz Khas Branch to work as temporary Peon. The copy of the said communication dated 18-11-1998 was also given to the workman, which is annexed hereto and marked as Annexure A-4.

Thereafter, the workman performed the functions of the Peon in the Hauz Khas Branch of Vijaya Bank. The workman was performing all the essential functions of a full-time Peon such as moving the files and other related documents of the Branch from one seat to another, stamping the deposit slips as receipt for deposit of cheques and sending the same for clearing, punching and stamping of cash receipt from the customer by the cashier, currency chest to the said Branch, signing the form while taking cash from Hauz Khas Branch to other branches, taking high value cheques for clearance to the Connaught Place Branch, purchase of stationary for the bank and such other works which are necessarily done by a full-time Peon in a Bank. He was also signing daily attendance register and other records available at Hauz Khas Branch as other regular employees. All such records are in the possession of the management bank/respondent and the same may be called upon further relevant period while the workman was employed which from 14-02-1995 to 2003.

That the said work of Peon, for which the workman was appointed, itself shows that the requirement of Peon by the Vijaya Bank at its Branch is permanent and perennial in nature. Hence the workman has a legally enforceable right to be regularized.

It is pertinent to mention here that in the year 1997-1998, there was about 400 employees, who were appointed purely on temporary basis by the Vijaya Bank at various branches.

The services of such persons were later on confirmed by the Vijaya Bank in the year 2000-01. Many of the said persons were peons. However, it is within the knowledge of this workman that two such persons, namely Shri Prem Singh and Shri Verghese have been regularized very recently by the Vijaya Bank and they were similarly situated as the workman being temporary employees.

That the workman was working as a Peon for the past so many years to the best of his ability and has an unblemished service record. In this regard it is reiterated that he was retained by the Vijaya Bank by requiring him to join the Hauz Khas Branch despite closure of the Hi-Tech Branch. He has been receiving salary regularly from the Vijaya Bank without fail and is not a daily wager. The statement of SB Account maintained by the workman in the Hauz Khas Branch clearly reflects that what is credited to the workman's account is "Salary". The statement of the bank account maintained by the workman in the very same branch where he is serving is annexed hereto and marked as Annexure A-5. Moreover, the workman received salary from the same source (account) out bank of which the other entire employee including the Branch Manager and the Sr. Staff, be it permanent or temporary, are paid their salaries. Therefore, the Vijaya Bank themselves; by their own conduct have treated the workman at par with other permanent and regular employees.

That the workman as on date has completed the mandatory 240 days of service without any break in a given year more than once. Despite this, his services has never been regularized by the Vijaya Bank itself shows that the requirement of Peon by the Vijaya Bank at its branch is permanent and perennial in nature. Hence, the workman has a legally enforceable right to be regularized. Such an act or omission on the part of the Vijaya Bank is wholly arbitrary, unreasonable, unjust, improper, unfair and illegal.

That very fact that persons such as Shri Prem Singh and Shri Verghese as afore-stated have been regularized, and who were similarly situated as the workman, is itself violative of Article 14 and Article 16 of the Constitution of India.

That since the workman was not being absorbed, he approached the Hon'ble High Court of Delhi for regularizing his services. But the Hon'ble High Court directed the workman to approach the appropriate forum to redress his grievances. The copy of the writ petition and the order of

the Hon'ble High Court are annexed hereto and marked as Annexure A-6.

That since November 2003, the workman has been asked by the Bank not to continue in service. The bank did not supply him with any written order or communication of termination. That the workman has completed the mandatory period of 240 days of continuous service as provided under Section 25-B of the I.D. Act, 1947. Hence, the workman has a legally enforceable right to be regularized.

That the workman was working as a Peon for the past 8 years to the best of his ability and has an unblemished service record. In this regard it is reiterated that he was retained by the Vijaya Bank by requiring him to join the Hauz Khas Branch despite closure of the Hi-Tech Branch.

That initially, from time to time, the services of the workman were extended by issuing fresh communications which arbitrarily stipulated period ranging from 30 days to 2 months. Significantly, there has not been a break of even a single day till date from the date of his appointment. Such communications were deliberately issued in order to make it appear as if the requirement was temporary. The workman's continuity in service was deliberately made erratic in order to circumvent the mandatory 240 days period and deny the consequential service benefits which the workman would have been entitled to.

That the workman was working as a Peon for the past so many years to the best of his ability and has an unblemished service record. In fact he was retained by the Vijaya Bank by requiring him to join the Hauz Khas Branch despite closure of the Hi-Tech Branch. For that the undersigned had been continuously working, without any break in services which he was appointed itself shows that the requirement of Peon is perennial in nature.

That the workman craves leave of this Hon'ble Court to add or amend the pleading of the present case, if necessary.

It is submitted that the workman has a legitimate right to be regularized with effect from 08-02-1995 and receive his salary from November 2003 onwards and other benefits entitled similarly situated regular employees, which he has been denied till now.

The management has filed written statement. In the written statement it has been stated that the service condition of the Award Staff in the Bank are governed by Sastry Award as modified by Desai Award and subsequent BP entered into between IBA and Central Unions at apex level. Para 20.7 of the 1st BPS deals with temporary employees. The same reads as under :—

"In supersession of paragraph 21.20 and sub-clause (c) of paragraph 23.15 of the Desai Award, temporary employee will mean a workman who has been appointed for a limited period of work, which is

essentially temporary nature or who is employed temporarily as an additional workman in connection with a temporary increase in work of a permanent nature and includes a workman other than a permanent workman who is appointed in a temporary vacancy caused by the absence of a particular permanent workman."

The Bank was nationalized on 15-04-1980 by virtue of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. Subsequent to nationalization of the Bank, Government of India issued recruitment rules and guidelines relating to reservation policy. As per the rules formulated by the Government of India, the recruitment to the post of subordinate category has to be made through the medium of Employment Exchange and complying with the reservation policy. The Central Government has clearly stipulated that even for temporary engagement of persons against temporary vacancies/casual vacancies; the same should be made through medium of Employment Exchange. The Hon'ble Supreme Court of India *Vs.* Haragopal and others reported in 1987 II LLN 20 has upheld the legal validity of the rules framed by the Government of India. Shri N. Shivaswamay who was engaged as temporary Peon without complying with the recruitment rules, reservation policy and without being sponsored by Employment Exchange, cannot claim permanent employment in the bank as of right. Legal position relating to temporary/ad hoc employment are furnished hereunder: --

The workman who was engaged temporarily on account of temporary increase in work or a vacant post without following the recruitment rules/procedure would not have a right to be appointed permanently for the post. If the contention of the petitioner is accepted, the rules would become otiose and nugatory and the person having authority can favour any person without following any procedure or rule which would only lead to arbitrariness. If an ad hoc employee is made permanent by the orders of the court merely on the ground that he has worked in the post for sometime, the entire rules could be easily bypassed by the persons having authority to make appointment on ad hoc basis. If the employer is directed to consider the petitioner as permanent employee, the result would be that the workman who was not selected under the rules would get benefit of being appointed to the post without due qualification or without facing any competition from the other eligible candidates. This cannot be permitted. The aforesaid principle has been laid down by the Gujarat High Court in Patel Evelin Ranchhodhai *Vs.* Gujarat Ayurved University reported in 1988 I LLJ 447.

The Supreme Court of India in Dr. Arundhati Ajit Pargaonkar *Vs.* State of Maharashtra and others reported in 1995 I LLJ 927 has held that eligibility and continuous working for howsoever long period should not be permitted to over reach the law. Requirement of rules of selection cannot be substituted by humane consideration.

It is further submitted that the Supreme Court of India in State of UP and another *Vs.* Nanda Kishore Tandon reported in AIR 1977 SC 1267 has held that a temporary government servant does not become a permanent government servant unless he gets that capacity either under some rule or is declared or appointed by the government as a permanent government servant. A person who is appointed in a substantive capacity on a temporary post does not become permanent merely because the post is declared to be permanent. In such a case, the order terminating the services of such an employee as a temporary employee is not illegal.

The Supreme Court of India in Dr. Surinder Singh Jambwal and another *Vs.* State of Jammu and Kashmir and others reported in 1966 II LLJ 795 has held that the ad hoc appointment would only be temporary appointment dehors the rules pending regular recruitment without conferring any right into regularization of service.

The Hon'ble High Court of Calcutta in Saramadas and others. Superintendent Durgapur Sub-Divisional Hospital and others reported in 1997 I LLN 861 has held that a person does not have any legal right to be absorbed in service permanently only because he has worked as casual labourer for more than 240 days. Mere prolonged or continuous service does not ripens into regular service to claim permanent or substantive status.

The Hon'ble High Court of Rajasthan in Garrison Engineers MES *Vs.* Central Industrial Tribunal and another reported in 1993 II LLJ 876 has held that a casual labourer does not have a right of preference in the matter of appointment when permanent appointment is made. He can claim reference only when appointment of casual nature is made by the employer after his termination of service. A casual employee cannot claim preference/precedence in the matter of regular appointment. He has to compete with other eligible persons for regular appointment.

The Hon'ble Supreme Court of India in Union of India and others *Vs.* Bishamber Dutt reported in 1997 II LLJ 381 has held that persons not appointed on regular basis according to rules cannot claim regularization based on their long length of service.

It is submitted that the name of the first party was not sponsored by the employment exchange. It is further submitted that he has not applied on any advertised position of the bank. In the circumstances, the claim of the petitioner deserves to be rejected.

It is submitted that Shri N. Shivaswamay was engaged due to increase in the workload. Letters were issued to him periodically mentioning the terms and conditions under which he was engaged and the period for which he was engaged depending upon the workload. It is not correct to state that the communications issued by the bank were with a view to make out a case that the recruitment was temporary and there was no necessity for the bank to

circumvent the period of 240 days as stated by him since his engagement was temporary in nature based on increase in workload and without following the recruitment rules. As mentioned hereinabove, mere completion of 240 days will not create any right for the workman to be regularized in the permanent service of the bank.

The statement contained in para 5 are based on the communication dated 18.11.1998, a copy of which is enclosed as Annexure A-4 by Shri N. Shivaswamay. He was asked to perform the duties at bank's Hauz Khas Branch since there was increase in workload at the said branch.

That Shri N. Shivaswamay has stated the duties alleged to have been performed by him while working at Hauz Khas Branch. He was engaged as a temporary peon and he was supposed to discharge the duties connect with the work assigned to him. Merely because he has discharged the duties performed by the Peon, the same will not give any right for him for regularization.

The existence of any permanent post of peon at Hauz Khas will not come to the rescue of Shri N. Shivaswamay since he has not subjected himself for permanent appointment and no letter to appointing him as a permanent peon was issued by the bank.

Shri N. Shivaswamay has stated that during 1997-98 there were about 400 employees appointed purely on temporary basis by the bank at its various branches. This statement is incorrect and he is put to strict proof thereof. The statement made by Shri N. Shivaswamay to the effect that the services of such persons were later on confirmed by the bank in the year 2000-2001 is false and hence denied. Shri N. Shivaswamay has cited the case of Shri Prem Singh and Shri Verghese. The bank had advertised for the post of Driver-cum-Peon, in response to which Shri Prem Singh and Shri Verghese submitted their applications. All the eligible candidates were interviewed by the committee constituted for the said purpose and Shri Prem Singh and Shri Verghese came out successful in the selection process. They have been appointed as probationary driver-cum-peon. Shri N. Shivaswamay has not submitted any application in response to the advertisement made by the bank and therefore, he cannot raise any objection regarding the selection made by the bank. There is no violation of Article 14 and Article 16 of the Constitution of India as alleged by him.

It is true that Shri N. Shivaswamay had been working as a temporary peon at erstwhile Hi-Tech Agricultural Branch and at Bank's Hauz Khas Branch, Delhi. He has not furnished any documents to show that he was appointed on a permanent basis. He was paid salary and allowances as applicable to temporary peons on full time basis. He has put forth a contention that he was paid salary by debiting to salary and allowances account as is being done in the case of permanent employee. This cannot be equated with the regular employment and he cannot become a regular

employee unless he was selected for permanent employment by following the recruitment rules and also by issue of appointment letter appointing him as a permanent peon.

Shri N. Shivaswamay was engaged as a temporary peon without following the recruitment rules and without subjecting himself for selection process. His engagement was temporary in nature. Mere completion of 240 days will not confer any right for regularization. Shri N. Shivaswamay is not having a legally enforceable right to be regularized and any statement made by him contrary to this is denied.

It is submitted that Shri N. Shivaswamay filed Civil W.P. No.7122/2003 before the High Court of Delhi at New Delhi. The Writ Petition came up for admission and the petitioner on realizing that the same will be dismissed sought permission of the court to withdraw the writ and accordingly the writ petition was dismissed as withdrawn with liberty to approach appropriate forum. The High Court has not directed Shri N. Shivaswamay to approach the appropriate forum and the statement made contrary to this is denied.

That Shri N. Shivaswamay has stated that he has completed the mandatory period of 240 days of continuous service as mentioned in Section 25 B of the ID Act, 1947 and hence he has got a legally enforceable right to be regularized. Nowhere in the I. D. Act, 1947 it is mentioned that a workman on completion of 240 days of continuous service should be regularized. Shri N. Shivaswamay may be directed to substantiate his contentions.

That Shri N. Shivaswamay was engaged as a temporary peon at erstwhile Hi-Tech Agricultural Branch on account of increase in workload which fact has been admitted by him in para 1 of the claim statement. Subsequently he was engaged as a temporary peon at Bank's Hauz Khas Branch due to increase in workload. The engagement of Shri N. Shivaswamay at two different places, both on temporary basis will not confer on him any right for absorption/regularization or ripen up into permanent employment.

It is submitted that the workman has a definite case and he cannot be permitted to add or amend the claim statement based on the statement of objections of the second party bank. The first party workman has got no right for regularization with effect from 08-02-1995 and receive his salary from November, 2003 mainly for the reason that his engagement was on temporary in nature caused on account of increase in workload which fact has been admitted by him in para 1 of the statement of claim. It is settled position of law that a person who was engaged on a temporary basis without following the recruitment rules and without subjecting himself the process of selection cannot claim the same salary that is being paid to the permanent employees. A temporary employee is not exposed to disciplinary action.

Shri N. Shivaswamy has not made out any ground for absorption/regularization in the permanent service of the bank. The prayer made by him is contrary to the law laid down by various High Courts and Supreme Court. He is not entitled for absorption/regularization. The reference may be answered in favour of the opposite party bank and against the first party workman.

The workman applicant has filed rejoinder. In his rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

It transpires from perusal of the order sheet that the workman was not present on 05-01-2007, 25-01-2007, 06-02-2007 and 12-03-2007. Last opportunity for filing affidavit was given on 25.01.2007 still the workman has not filed affidavit. On 12-03-2007 evidence of the workman was closed and the case was reserved for award.

The management was also not present on that date. From perusal of the records it transpires that in view of the admission of the management and abundant documentary evidence, oral evidence of the parties is not necessary. The case is decided on merits in view of the admission of the management and documents filed by the workman and not denied by the management.

From perusal of the pleadings of the parties the following issues arise for adjudication:

1. Whether the workman has completed 240 days work during his period of employment?
2. Whether the workman is entitled to reinstatement?
3. To what amount of back wages the workman is entitled?
4. Relief if any?

Issue No. 1

The case of the workman is that he was appointed as Peon on 14-01-1995 with Vijaya Bank on temporary basis in its Hi-tech Agricultural Branch at Delhi. He was issued appointment letter on 14-01-1995. He resumed work on 08-02-1995. This branch was closed and he was relieved from the said branch and he was asked to report for duty at Vijaya Bank, Hauz Khas Branch to work as temporary peon. The copy of the said communication dated 18-11-1998 is on the record A-4. The workman performed all the duties of Peon. He has consistently worked from 08-02-1995 till the date of his termination. Two junior employees Shri Prem Singh and Shri Verghese have been regularized. They were similarly situated.

The case of the management is that the workman was engaged on essential temporary nature of work in connection with temporary increase in work of a permanent nature. The *ad hoc* employees cannot be regularized merely

on the ground that they have worked in the post for sometime.

It is further case of the management that in case the workman has discharged the duties performed by the Peon the same will not give any right to him for regularization. The workman has not been appointed through selection process and he has been engaged in view of increase of work. The workman was paid salary and allowances as applicable to temporary Peon on full time basis. He was engaged as a temporary Peon without following the recruitment rules and without subjecting himself for selection process. His engagement was temporary in nature; mere completion of 240 days will not confer any right for regularization.

The further case of the management is that the engagement of the workman at two different places, both on temporary basis will not confer him any right to absorption/regularization or and ripe into permanent employment. The workman has not made any ground for absorption/regularization.

It becomes abundantly clear that the management has not denied even evasively that the workman has not worked from 08-02-1995 till the date of termination of his services. Hence, it is admitted case that the workman regularly worked from 08-02-1995 till 2003 and his services have been terminated without retrenchment compensation and one month's pay in lieu of notice. This fully establishes that the workman has worked for 240 days in 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002 and 2003. Thus, he has continuously and regularly worked for complete 9 years without any break. It has not been denied by the management that the workman has not worked continuously. The workman has filed appointment letters issued by the management B-19 to B-32. These letters of appointment have not been disputed by the management. The workman has further filed photocopies of the documents B-34 to B-41. These documents have not also been denied by the management. These documents establish that the workman has been paid salary right from 23-11-1998 to 11-10-2003. These are photocopies of statement, period from 01-01-1995 to 18-10-2003. The workman has been given even transfer salary. He has worked up to 11-10-2003 as is evident from the statement of accounts filed by the workman and admitted by the management. These two sets of documents establish beyond any ray of doubt that the workman has worked regularly for the periods he has alleged in his claim statement.

The management has not denied the continuous and regular performance of duties of the workman from 08-02-1995 to 11-10-2003. In view of the admission of the management and abundant documentary evidence filed by the workman, oral evidence is not material.

From above it becomes amply proved that the workman has worked continuously and regularly against permanent nature of work and he has been paid salary for the entire period and the statement of the bank shows that salary has been paid to the workman. There is no mention of wages in the statement of accounts of the workman. He has worked on two places in Hitech Agricultural Institute of the Bank and at the branch of Hauz Khas. Thus, it is proved that the workman has worked regularly and continuously against permanent nature of work and he has completed 240 days in all the years of his employment. He has worked for 9 years and in all the 9 years he has performed 240 days duty. This issue is decided accordingly.

Issue No. 2.

The case of the management is that working of 240 days for various years will not entitle the workman for absorption/regularization. The matter referred to is whether the termination of services of the workman is illegal.

Section 25 F postulates that in case a workman has continuously and regularly worked for 240 days against a permanent nature of work he should be paid one month's pay in lieu of notice and retrenchment compensation. It is settled law that in case a workman has worked so, termination of his services without payment of retrenchment compensation will not validly discontinue his services and he shall be deemed continued in service and there will be no cessation of service.

My attention was drawn by the Ld. Counsel of the workman to 2000 LLR 523 State of UP and Rajender Singh. The Hon'ble Apex Court ordered for reinstatement with full back wages as the services of the daily wager cleaner who worked for 4 years was dispensed with without following the procedure for retrenchment. In the instant case also no retrenchment compensation has been paid. This case law squarely covers the instant case.

It has been held in 1978 Lab IC 1668 that in case service of a workman is terminated illegally the normal rule is to reinstate him with full back wages.

My attention was further drawn to AIR 2002 SC 1313. The Hon'ble Supreme Court has held that daily wagers even if serving for a short period should be reinstated.

It was submitted from the side of the workman that in the instant case Section 25 F, G of the ID Act is attracted. In Section 25 of the ID Act it has been provided that if a workman has performed 240 days work and if the work is of continuous and regular nature he should be given pay in lieu of notice and retrenchment compensation.

It has been held by the Hon'ble Apex Court that there is no cessation of service in case provisions of Section 25 F are not complied. In the instant case no compensation has been paid to the workmen who have continuously worked for 8 years.

In the Constitution Bench Judgment in Uma Devi's case these matters were not at issue. In case a workman has worked for 9 years and the work is of continuous and regular nature he should be paid retrenchment compensation. In case retrenchment compensation is not paid Section 25 F of the ID Act is attracted. There is no cessation of services. He is deemed continued in service in the eye of law. In case there is breach of Section 25 F the service is continued and reinstatement follows as a natural consequence.

ID Act, 1947 has been enacted to safeguard the interest of the workmen belonging to poor segment of society. It appears that legislature wanted that such workmen should not be harassed un-necessarily so Section 25 F, G, T and Clause 10 of Vth Schedule have been enacted. The objects and reasons of ID Act, 1947 show that the respondent management should not be permitted to indulge in any unfair labour practice. The workman should not be engaged for years and then he should be removed all of a sudden. There is provision of retrenchment compensation for his removal. Retrenchment compensation is for compensating him otherwise so that he can survive long duration of unemployment. In the instant case no retrenchment compensation has been paid.

It was submitted from the side of the management that the Hon'ble Apex Court in 2006 (4) Scale has put down a complete ban on regularization and reinstatement. The Hon'ble Apex Court has held that employment can only be made on the basis of procedure established in that behalf envisaged by the Constitution. Equality of opportunity is the hallmark and the Constitution enshrines affirmative action to ensure that unequals are not treated equals. So public employment should be in terms of constitutional scheme.

It was further submitted that the Constitution Bench Judgment has afforded a right according to which the government is not precluded from making temporary appointments or engaging workers on daily wages.

The Hon'ble Apex Court has not declared the provision of ID Act un-constitutional. The Government has got no license to make always appointment of daily wagers and to continue them for life time. Fixed term tenure appointments and temporary appointments cannot be the rule of public employment. At the time of making temporary appointments Articles 14, 16, 21, 23, 226 & 309 are infringed. There is no constitutional mandate that the Government is at liberty to go on giving fixed term appointments for the entire tenure of service of an employee.

No such Article of the Constitution has been pointed out under which the Government or Public Sector units can continue incessantly to give temporary and fixed term appointments again and again. Since fixed term appointments and temporary appointments are not governed by any constitutional scheme, such

discrimination will amount to vicious discretion. The Government of Public Sector unit will go on resorting to the method pick and choose policy and give temporary and adhoc appointments to their favorites and thus the principles of equality enshrined in the constitution will be given a go bye. Such is not the intent of the Hon'ble Apex Court. However, in this judgment the provision of the ID Act governing the services of the workman have not been declared unconstitutional. Reinstatement is the remedy provided in the ID Act for breach of several provisions enumerated therein or for breach of service rules provided in various labour welfare legislations.

Section 11 A of the ID Act stipulates that in case the Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstance of the case may require. According to this benign provision this Tribunal has the authority to set aside the order of discharge or dismissal and reinstate the workman on the terms and conditions as it thinks fit.

The Hon'ble Apex Court in 2006 (4) Scale has not annulled Section 11 A of the ID Act and the legislature has authorized this Tribunal to set aside dismissal or discharge on its consideration and direct reinstatement. The judgment cited by the management is not applicable in the facts and circumstances of the case.

A three Judges bench of the Hon'ble Apex Court has held in 1993 - II - LLJ that termination of services affects the livelihood of not only of the employee but also of the dependents. So in case of illegal termination of service the workman should be reinstated.

Reinstatement should not be misconceived as regularization. By the order of reinstatement the status quo ante of the workman is restored. He is given back wages in order to compensate him for his illegal disengagement. This is a special remedy provided in ID Act and it has not been annulled and set aside by any judgment of the Hon'ble Apex Court. The provisions of the ID Act are still constitutional and they are to be given effect too.

In such cases the workman is reinstated with back wages and the respondents have every right, after payment of back wages and reinstatement, to retrench him validly following the principles of first come last go so that Section 25, G & H of the ID Act are not violated.

In view of the above discussions it is held that the termination of the workman is absolutely illegal, arbitrary and unjust as he has not been paid retrenchment compensation. For valid termination of service of an employee who has worked for 9 years, retrenchment compensation is mandatory. The management has violated

these mandatory provisions of law. The workman is entitled to reinstatement w.e.f. 12-10-2003. This issue is decided accordingly.

Issue No. 3.

The workman has worked for 9 years and in all the 9 years of his employment he has worked continuously and regularly. There are no hard and fast rules for back wages. It is decided on the facts and circumstances of the particular case.

It was further submitted that payment of full back wages is not the natural consequence of the order of discharge or dismissal being set aside. It has been held in (2003) 6 SCC 141 that it is incumbent upon the Labour Court to decide the quantum of back wages. In PGI Vs. Raj Kumar (2001) 2 SCC 54 the Hon'ble Apex Court upheld the 60% award of back wages of the Tribunal.

It has been further held in this case that payment of back wages having discretionary element involved it is to be dealt with the facts and circumstances of the case. No definite formula can be evolved.

It has been further held in this case that payment of back wages in its entirety is the statutory sanction. In (2003) 4 SCC 27 the Hon'ble Apex Court held that in view of delay in raising the dispute and initiating the proceedings back wages need not be allowed. In the instant case there is no delay at least on the part of the workman, in raising the dispute.

In 1978 Lab IC 1968 - three Judges Bench of the Hon'ble Apex Court held that payment of full back wages is the normal rule. In case services have been illegally terminated either by dismissal or discharge or retrenchment, in such circumstance the workman is entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. In the instant case the workman was always ready to work but he was not permitted on account of invalid act of the employer.

In 2005 IV AD SC 39 - three Judges Bench of the Hon'ble Apex Court held that reinstatement with full back wages is justified. In this case the workman has performed more than 240 days work and he has been retrenched without payment of compensation and pay in lieu of notice.

It was submitted from the side of the management that reinstatement is not the only remedy. In such cases the workman may be given compensation. Section 11 A of the ID Act, 1947 provides that in case of dismissal or discharge is found illegal reinstatement should be ordered. It has been held in a catena of cases by the Hon'ble Apex Court that reinstatement with full back wages is the normal rule. The statute provides for reinstatement. In certain exceptional cases where the undertaking has been closed down or it has become sick there may be order for payment of compensation. This is not the case of the management.

In view of continuous and regular 9 years of service of the workman, he is entitled to 100% back wages. This issue is decided accordingly.

Issue No. 4

The workman has served the management satisfactorily for long period of 9 years. His services have been terminated without payment of retrenchment compensation and even one month's pay in lieu of notice. The management has acted in violation of Section 25 F of the ID Act, 1947. Even engaged against increased load of work, the management is bound to pay retrenchment compensation even as per the provisions of the BPS. The workman is entitled to reinstatement with 100% back wages w.e.f. 12-10-2003. This issue is decided accordingly.

The reference is replied thus:

The action of the Vijaya Bank in terminating the services of the workman Shri N. Shivaswamay, Ex. Temp. Peon is neither just nor fair nor legal. The management should reinstate the workman w.e.f. 12.10.2003 along with 100% back wages and thereafter regularize his services in view of Uma Devi's case.

Award is given accordingly.

Date : 28-3-2007.

R. N. RAI, Presiding Officer

नई दिल्ली; 30 मार्च, 2007

का.आ. 1132.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (संदर्भ संख्या 129/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-3-2007 को प्राप्त हुआ था।

[सं. एल-12012/37/98-आई.आर.(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1132.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 129/2004) of the Central Government Industrial Tribunal-cum-Labour Court Ahmedabad (Gujarat) as shown in the Annexure, in the Industrial Dispute between the management of Bank of India, and their workmen, which was received by the Central Government on 30-3-2007.

[No. L-12012/37/98-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT AHMEDABAD

PRESENT : Shri A.A. LAD
Presiding Officer

(Reference C. G. I. T. A. No. 129/04
Old (I. T. C.) No. 111/98

Zonal Manager, Bank of India,
Zonal Office, Bhadra,
Ahmedabad-380001
First Party
V/s

The General Manager,
Bank of India Staff Union,
Bhadra, Ahmedabad
Second Party

Appearance

First Party : (Shri M. S. Majumdar)
Second Party : (Absent)

AWARD

1. The Government of India Ministry of Labour and Employment New Delhi has referred the Industrial Dispute between the above parties by Order No. L. 12012/37/98/IR (B-II) dated 14-12-1998 to this Tribunal. The terms of reference is as under :

SCHEDULE

"Whether the action of the management of Bank of India in terminating the service of Sh. N. T. Waghela vide order dated 28-08-1996 is legal and justified ? If not, to what relief the said workman is entitled ?"

2. To substantiate the subject matter referred in the reference second party submitted a statement a claim at Ex. 3 which is replied by the first party by filing W. S. at Ex. 11. The rejoinder filed by the first party at Ex. 12.

3. The second party Shri N. T. Waghela was working in Bank of India at Ahmedabad (main) branch stated that, he was punished by ordered dated 13-4-1996 by implementing punishment of dismissal without notice. Being aggrieved by the same, he approached the appellate authority who turn down his appeal so he raised dispute before R.I.C. (Central) which send failure report on it and same was referred here for adjudication.

4. First party made out case that, second party joining on 1-1-1979 and work till 1-11-1986 as a full time sweeper. First party had issued him memos/notice advising him to be punctual and improve his attendance. However, second party was in the habit of remaining absent unauthorisedly from duties without prior permission or without intimation to the Bank. He was transferred in various branches still he does not show any improvement in him. There is absent of more than 60 days. After going through record and after noting there is no improvement in the attendance of the

second party and after noting finding of the I. O. on serious charge of misconduct and remaining absent on duty on several occasion, action of dismissal was taken, it is pleaded that it was just, proper does not required interfere.

5. It is matter on record, the second party chose not lead evidence and by purshis at Ex. 22 he close his evidence.

6. Against that first party also by purshis at Ex. 32 decided not to lead evidence and has submitted purshis at Ex. 33 in Gujarati script.

7. No oral evidence is lead by both. There is inquiry proceeding. It reveals that, inquiry conducted against the second party was conducted in absentee and termination was attended against him. Even second party has not attended court since 2000. The representation who appear today for second party submitted that since 2000 he do not know about second party and learn he is dead but unable to produce death certificate.

8. The subject matter was reference whether the action of the management of Bank of India in terminating the second party by order dated 28-8-96 is legal and just?

9. It reveals that, second party is absent in the proceeding right from 2000. Now we are in 2007. In this situation there is no propriety in deciding the subject matter of the reference and considered at when second party is not alive. So the alleged grievances of the second party are not proved. Moreover, no evidence is lead of any type by the second party to show that, he was having reason in remaining absent. In result I proceed to pass the following order :

ORDER

Reference is disposed off as claimed not proved. No order as to its cost.

Date: 6-1-2007. A. A. LAD, Presiding Officer
Ahmedabad

नई दिल्ली, 30 मार्च, 2007

का.आ. 1133.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कॉरपोरेशन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 32/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-3-2007 को प्राप्त हुआ था।

[सं. एल-12011/160/99-आई.आर.(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1133.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2000) of the Central Government Industrial Tribunal-cum-

Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of Corporation Bank and their workmen, received by the Central Government on 30-3-2007.

[No. L-12011/160/99-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 13th March, 2007

PRESENT

SHRI A. R. SIDDIQUI, Presiding Officer

C.R. NO. 32/2000

I Party	II Party
The General Secretary, Corporation Bank Employees Guild Redg., Anand Plaza, Anand Rao Circle, Bangalore	The Chairman & Managing Director, Corporation Bank, Head Office, Mangaladevi Temple Road, P.B. No. 88, Mangalore.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute *vide* Order No..L-12011/160/99-IR(B-II) dated 30th June 2000 for adjudication on the following schedule :

SCHEDULE

“Whether the management of Corporation Bank is justified in debiting leave in order to claim wages in respect of workmen who did not participate in the strike on 4-7-1997 ? If not, to what relief the workmen are entitled to?”

2. The facts undisputed arising out of the pleadings of the parties by way of Claim Statement and Counter Statement, respectively, are that some of the Trade Unions in the Banking Industry gave call for strike on 4-7-1997 pressing the demand against the management of local area banks, implementation of pension scheme etc. The first party union bank employees, Guild (hereinafter referred as ‘Guild’) decided not to be a party to the strike call informing the management bank by letter dated 25-6-1997 and that its members will not participate in the strike scheduled on 4-7-1997, and requesting to make arrangements to keep the branches/offices open to enable its members to attend and discharge their duties; that the bank issued instructions to the Senior Managers of the Bank about the said strike by letter dated 28-6-1997 giving the instructions that absence of employees who were not on strike will be against appropriate leave due to them, as against the letter of the

first party union to treat the absence of members of the Guild on 4-7-1997 as special casual leave in terms of the circular dated 4-1-1989 as its members could not have entered the premises of the branches of Bank and the branches infact were kept closed for no fault of theirs amounting to virtual lockout. It is not in dispute that the management/bank did not grant the special leave for their absence on 4-7-1997 and debited one day leave from the respective employees accounts in terms of the letter or instructions dated 9-7-1997. It is not in dispute that aggrieved by the order of the management in denying them special leave as per circular dated 4-1-1989 the first party union filed writ petition No.18984/97 and thereupon, approached the Govt. of India for making a reference of dispute to this tribunal and the Govt. of India directed the union to approach the Conciliation Officer concerned and it is on the failure of the conciliation proceedings, failure report was made to the Govt. of India resulting into the present dispute.

3. The main contention of the first party union by way of two grounds urged in the Claim Statement is that the employees of the bank who are the members of the Guild did not participate in the strike on 4-7-1997 and had come to the bank branches/offices on the above said date to perform their duties but could not perform the job as the branches /offices doors were not kept opened on that day. Therefore, for no fault of theirs the bank cannot deduct the hard earned leave or salary for 4-7-1997 as the principle of 'no work no pay' is not attracted in the present case. Therefore, the decision of the bank in not granting special leave to the members of the Guild as per the circular dated 4-1-1989 is not just and fair and in the result the first party union requested this tribunal to pass an award to the effect that the members of the Guild are entitled to special casual leave on 4-7-1997 in terms of the Circular No.8/89 dated 4-1-1989 issued by the bank.

4. The management by its Counter statement did not dispute the fact that as per the circular No. 8/89 dated 4-1-1989 under Clause D, if on the day of strike, a particular branch/office remains locked, the absence of employees who were not on the strike may be regularized as special casual leave by an authority not lower than Assistant General Manager as the case may be subject to fulfilment and other conditions laid down in the said circular. However, the management contended that while quoting above said circular the first party has conveniently omitted to mention the subsequent circular No. 297/95 dated 22-8-1995 as per which Part D of the Circular 8/89 referred to supra has been amended to the effect that if on the day of the strike a particular office of a bank remains unopened, the absence of the employees who were not on strike should be regularized by allowing appropriate leave due to those employees subject to fulfilment of the conditions therein (the rest of the conditions in both the circulars are similar to each other). The management contended that the

aforesaid instruction given by the circular of the year 1995 are in line with Para 511 of the Shastry Award applicable to the award staff of the bank having statutory force and cannot be termed as arbitrary. It contended that on the above said date certain branches/offices of the bank could not be opened due to strike by majority of the employees belonging to the officers union and award staff unions and thus was the cause beyond the control of the management and therefore, the management was justified in treating the employees who were not on strike as on leave of appropriate category. The management contended that it suffered huge loss due to the strike and in the case of employees belonging to the unions who had given call for strike, wages have been deducted on the principle of 'no work no pay' besides reserving its right to take appropriate disciplinary action against them and whereas, in the case of the first party, the bank has only debited leave of appropriate category not applying the principle of 'no work no pay' besides not holding them liable to disciplinary action as in the case of members of other unions.

5. During the course of trial, the management filed affidavit of one Mr. PPRV Prasad said to be working as Sr. Manager in its establishment by way of his examination chief as MW1 and in his further examination chief got marked two documents at Ex. M1 & M2. His averments in the affidavit are just the replica of the various contentions taken by the management in its aforesaid counter statement. In his cross examination it was elicited that Circular dated 4-1-89 at Ex. M2 is to deal a situation not fully covered under the Shastry Award and it has become part and parcel of service conditions of the employees and that they have not issued registered notices to all the registered Trade Unions functioning under the management before issuing the circular at Ex.M3 dated 22-8-1995 under Section 9(A) of the L.D. Act. He was unable to say if any disciplinary action has been taken against the employees who were on strike and he was not knowing if anybody of them was punished by the management.

6. On behalf of the first party union one Mr. Krishnaraya Kini said to be the General Secretary of the 'Guild' filed his affidavit by way of examination chief as WW1 and in his further examination chief got marked six documents at Ex.W1 to W6. His averments in the affidavit are just repetition of claim statement averments. In his cross examination he admitted that he has been working in the Bank since 1967 and presently he is working as a Clerk. He admitted that service conditions of the award staff are governed by Desai Award and modified by Shastry Award and there are several Bipartite Settlements between the banks and union employees after Shastry Award. He admitted that Bipartite Settlements whenever do not touch or modify the terms of the Shastry Award, Shastry Award will continue to govern the employees of both the categories even now. When confronted with Para 511 of the Shastry Award marked at Ex. M1, lie admitted that said

para 511 of Shastry Award has not been modified by any Bipartite Settlement and it continues to hold the field. He admitted that Para D of Ex. W1 (Circular No. 8/89 dated 4-1-1989) has been modified and replaced by Clause D of Ex. W2 (Circular dated 297/95 dated 22-8-1995). However, he denied the suggestion that but for Clause D in Ex. W1 no employees would have been entitled for special leave on the ground of strike. While admitting that Ex. W2 is still in force, he further stated that they have asked for special leave in the light of Clause D of Ex. W1. He denied the suggestion that Ex. W2 is in line with the Shastry Award while admitting that as per the Shastry Award there is no provision for grant of special leave during the period of strike.

7. Learned counsel for the Second Party, Shri PSS in his argument mainly, focused on the point that though as per Ex. M2 (W1) there is a provision for grant of the special leave to the employees, not on strike. This provision been amended by circular at Ex. M3 (W2) and as per this amendment such an employee will be entitled to any other appropriate leave due to him, of course, subject to fulfilment of other conditions laid down in the aforesaid two circulars. Learned counsel contended that the above said amendment of Clause D in the circular at Ex. M3 was in accordance with the terms of the Shastry Award, particularly, Para 511 of the said award and therefore, the first party union will have no right to seek any special leave in favour of its members who were not on strike on the above said date.

8. Coming to the question as to whether any registered notice was issued union under Section 9(A) of the ID Act, while amending the above said service conditions. Learned counsel argued that first of all no such contention was taken by the first party in its claim statement and secondly, it was not necessary as circular at Ex. M3 (W2) was issued in pursuance to Shastry Award which was very much in force on the relevant date. In support of his argument learned counsel cited certain decisions to be taken into consideration later on, if found necessary.

9. Whereas, learned counsel appearing for the first party union, Shri N.G. Padkhe vehemently argued that the first party union members/employees were entitled to get special leave keeping in view the instructions given in the circular at Ex. W1 (M2) as undisputedly, they were not on strike with prior intimation to the authority concerned. He contended that the Circular at Ex. W2 (M3) taking away right of such employees in getting the special leave by way of amendment could not have been issued and could not have been laid down the service conditions in the face of the circular at Ex. W1 (M2) and Para 511 of the Shastry Award itself. Undisputedly, the management did not issue any registered notice to the Trade Unions including the first party union under Section 9(A) of the I.D. Act before amending the service conditions by way of Ex. W2. Therefore, he submitted that Ex. W2 shall not be having force of law in the absence of any such notice issued to the

first party union. He submitted that the management in fact has treated the employee on strike in par the employees who were not on strike thereby encouraging the employees on strike and punishing the employees not on strike for no fault of theirs. He also cited certain decisions in support of his arguments. The copies of those decisions were not made available to this tribunal.

10. After having gone through the records, the evidence brought record, and the material placed before me I find substance in the arguments advanced for the management. Keeping in view the facts undisputed/admitted referred to supra, the only short point now to be considered would be whether the members of the Guild being represented by the first party union who were not on strike on the aforesaid date are entitled to special leave as provided under Circular 8/89 dated 4-1-1989 or whether the management was justified in deducting any other appropriate leave due to the employees as per the circular No. 297/95 dated 22-8-1995. The fact that there has been an amendment to Para D of Ex. W1 being modified and replaced by Clause D of Ex. W1 has been very much admitted by WW1, the witness for the first party union. WW1 also admitted that WW2 is still in force and they have asked for special leave in the light of clause D of Ex. W1. Clause D of Ex. W1 certainly was in favour of the employees of the bank with a provision of grant of special leave in their favour if they remained absent on the day of the strike and that the branches/offices of the bank were not opened to them to discharge their duties. It is undisputable that this clause D of the Circular at Ex. W1 of the year 1989 has been amended by Clause D of the above said circular of the year 1995 where under a provision has been made for grant of any other appropriate leave due to the employees who were not on strike. For our ready reference let me bring on record the relevant portion of Clause D of Circular of the year 1989 running as under :—

“If on the day of strike a particular branch/office remains locked, the absence of employees who were not on strike may be regularized as Special Casual Leave by an authority not lower than Asst. General Manager as the case may be subject to fulfilment of the following conditions.”

11. The relevant clause D under Circular of the year 1995 reads as under :—

“If there is a call for strike given by any union of bank employees and an employee remains absent on the strike day, should be deemed to be on strike and his wages for the day should not be paid on the principle ‘No Work No Pay’ in addition to any action the management may like to take as per the service rules. If one the day of the strike a particular office of a bank remains unopened, the absence of the employee who were not on strike should be regularized by allowing appropriate leave due to the

employees subject to fulfilment of the following conditions.”

12. Therefore, no one can dispute the fact that Clause D of Circular of the year 1989, such of the employees who remained absent from duty on the day of the strike were entitled to get their absence regularized as special casual leave by the authority concerned and it is under clause D of the Circular of the year 1995 while amending the clause D of the circular of the year 1995, provided that if such of the employees have remained absent on the day of the strike their absence should be regularized by allowing appropriate leave due to them subject to fulfilment of the other conditions laid down, therein. Therefore, keeping in view the above said undisputed fact, now there cannot be two opinion on this controversial point to say that under the circular of the year 1995 the employees who were absent on the day of the strike were not entitled to get the special leave. Their absence on the day of the strike is now to be regularized by way of granting them any other appropriate leave and i.e. what is done by the management in this particular case. Now, as argued for the management, it is for the first time the first party union in the cross examination of management witness raised a question that it has not issued a registered notice to the first party union and other unions of the employees before amending the service provisions by way of above said circular at Ex.W1 (M2). It was well argued for the management that such a notice was necessary to be issued in case the above said amendment went against the terms of the Shastry Award. Para 511 of the Shastry Award on this point reads as under :—

- (1) In the event of fire, catastrophe, an epidemic, civil commotion or other cause beyond the control of the bank, it may at any time, without notice or compensation in lieu of notice, close down, as the event may require, the bank or any branch, department or part thereof for a reasonable period.
- (2) An employee affected by a stoppage under Clause (1) above shall be deemed to be on privilege leave to the extent such leave is admissible; and for the balance of the period, except where his services are dispensed with, he shall be deemed to be on leave without pay.”

13. Therefore, from the reading of the above said Para in the Shastry Award it can never be said that the amendment brought out by the management in the aforesaid circular at Ex.W2 (M3) was in consonance with the terms of the Shastry Award. WW1 in his last sentence of the cross examination has admitted that there is no provision for grant of special leave due to strike as per the Shastry Award. The above said condition of service with regard to the grant of leave in a situation like one on hand as per the above said terms of the Shastry Award therefore, cannot be said to have been changed by way of the aforesaid

amendment as contemplated under Section 9(A) of the ID Act. This amendment was perfectly in accordance with Para 511 of the Shastry Award and there was no change in the conditions of service, thereby requiring the management to issue any notice to the first party union or other unions as contemplated under the said provision. In the result, and the reasons foregoing, I have absolutely no hesitation in my mind to come to the conclusion that the management was justified in debiting leave in order to claim wages in respect of the workmen who did not participate in the strike on 4-7-1997 and in the result the reference must fail and hence the following award :—

AWARD

The reference stands dismissed. No costs.

(Dictated to PA transcribed by her corrected and signed by me on 13th March, 2007).

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 11 अप्रैल, 2007

का.आ. 1134.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, जिसके 80 प्रतिशत कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, निम्नलिखित कार्यालयों को अधिसूचित करती है :—

1. क्षेत्रीय भविष्य निधि कार्यालय, बंगलौर (कर्नाटक)
2. क्षेत्रीय भविष्य निधि कार्यालय, गुन्डूर (आन्ध्र प्रदेश)
3. उप-क्षेत्रीय भविष्य निधि कार्यालय, रायचूर (कर्नाटक)
4. उप-क्षेत्रीय भविष्य निधि कार्यालय, वाशी (महाराष्ट्र)
5. उप-क्षेत्रीय भविष्य निधि कार्यालय, कोल्लम (केरल)
6. उप-क्षेत्रीय भविष्य निधि कार्यालय, अकोला (महाराष्ट्र)
7. क्षेत्रीय भविष्य निधि कार्यालय, दिल्ली दक्षिण (नेहरू प्लेस)
8. क्षेत्रीय भविष्य निधि कार्यालय, मैसूर (कर्नाटक)
9. आंचलिक प्रशिक्षण संस्थान, पश्चिम क्षेत्र, उज्जैन।

[सं. ई-11017/1/2006-रा.भा.नी.]

शारदा प्रसाद, संयुक्त सचिव

New Delhi, the 11th April, 2007

S.O. 1134.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union), 1976 the Central Government hereby notifies following offices, the 80% Staff whereof have acquired working knowledge of Hindi :—

1. Regional Provident Fund Office, Bangalore (Karnataka)
2. Regional Provident Fund Office, Guntur (Andhra Pradesh)

3. Sub-Regional Provident Fund Office, Raichur (Karnataka)
4. Sub-Regional Provident Fund Office, Vashi (Maharashtra)
5. Sub-Regional Provident Fund Office, Kollam (Kerala)
6. Sub-Regional Provident Fund Office, Akola (Maharashtra)
7. Regional Provident Fund Office, South Delhi (Nehru Place)
8. Sub-Regional Provident Fund Office, Mysore (Karnataka)
9. Zonal Training Institute, Western Region, Ujjain.

[No. E-11017/1/2006-RBN]

SHARDA PRASAD, Jt. Secy.

नई दिल्ली, 13 अप्रैल, 2007

का.आ. 1135.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (d) के उप-खण्ड के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 4173 दिनांक 10-10-2006 द्वारा प्रतिभूति, मुद्रणालय, हैदराबाद जो कि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 12 में शामिल है, को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 17-10-2006 से छः मास के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः, अब; औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 17-4-2007 से छः मास की कालावधि के लिए उपयोगी सेवा घोषित करती है।

[फा. सं. एस-11017/8/97-आई.आर.(पी.एल.)]

गुरजोत कौर, संयुक्त सचिव

New Delhi, the 13th April 2007

S.O. 1135.—Whereas the Central Government having been satisfied that the public interest so requires that in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No 4173 dated 10-10-2006 the service in the Security Printing Press, Hyderabad which is covered by item 12 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a Public Utility Service for the purpose of the said Act, for a period of six months from the 17th October, 2006.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a Public Utility Service for the purposes of the said Act, for a period of six months from the 17th April, 2007.

[F. No. S-11017/8/97-IR(PL)]

GURJOT KAUR, Jt. Secy.

नई दिल्ली, 13 अप्रैल, 2007

का.आ. 1136.—जबकि मैसर्स रीको इंडिया लिमिटेड (इसके पश्चात् प्रतिष्ठान के रूप में उल्लिखित) ने कर्मचारी भविष्य निधि एवं प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (इसके पश्चात् अधिनियम के रूप में उल्लिखित) की धारा 17 की उप-धारा (1) के खण्ड (k) के अंतर्गत छूट के लिए आवेदन किया है।

2. और जबकि केन्द्र सरकार के विचार में अंशादान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम, उक्त अधिनियम की धारा 6 में विनिर्दिष्ट की गुलाम में कर्मचारियों के लिए कम अनुकूल नहीं है और कर्मचारी, उक्त अधिनियम के अंतर्गत अथवा इसी प्रकार के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में कर्मचारी भविष्य निधि स्कीम, 1952 (इसके पश्चात् उक्त स्कीम के रूप में उल्लिखित) के अंतर्गत प्रदान किए जा रहे अन्य भविष्य निधि लाभों का भी फायदा उठा रहे हैं।

3. अतः, अब, केन्द्र सरकार उक्त अधिनियम की धारा 17 की उप-धारा (1) के खण्ड (k) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और समय-समय पर इस संबंध में केन्द्र सरकार द्वारा उल्लिखित शर्तों के अध्यधीन एतद्वारा उक्त प्रतिष्ठान को उक्त स्कीम के सभी उपबंधों के प्रचालन से 1-12-1993 से अगली अधिसूचना तक छूट प्रदान करती है।

[संख्या एस-35015/5/2007-एस.एस.-II]

एस.डी. जेवियर, अवर सचिव

New Delhi, the 13th April 2007

S.O. 1136.—Whereas M/s. Ricoh India Ltd. (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those

specified in Section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of Section 17 of the said Act and subject to the conditions specified in this regard from time to time, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 1-12-1993, until further Notification.

[No. S-35015/S/2007-SS-II]

S. D. XAVIER, Under Secy.

नई दिल्ली, 30 मार्च, 2007

का.आ. 1137.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बैंगलोर के पचाट (संदर्भ संख्या 24/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-3-2007 को प्राप्त हुआ था।

[सं. एल-40012/116/1996-आई.आर.(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 30th March, 2007

S.O. 1137.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (R.F. No. 24/98) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workmen, which was received by the Central Government on 30-3-2007.

[No. L-40012/116/96-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated: 9th March, 2007

PRESENT

Shri A.R. SIDDIQUE
PRESIDING OFFICER

C.R.No.24/1998

I PARTY	II PARTY
Smt. K. Shantha, M.M. Garden, Old Kent Road, MANGALORE.	The General Manager, Telecom, Old Kent Road, MANGALORE.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute *vide* order No. L-40012/116/96-IR(DU) dated 10th March, 1998 for adjudication on the following schedule:—

SCHEDULE

“Whether the action of the Department of Telecommunication in denying employment to Smt. K. Shantha w.e.f. 19-2-1990 is legal and justified? If not, to what relief she is entitled?”

2. The case of the first party workman, as made out in the Claim Statement, in brief, is that she was working under the Second Party Management as a Sweeper on part time basis from 4-3-1979 until 2-3-1986 under the Assistant Engineer (Civil), Sub-division, Mangalore and also worked from 1-11-1985 to 18-2-1990 at Telephone Exchange, Mangalore. She was denied job w.e.f. 19-2-1990 without any notice or compensation, taking somebody else in her place; that as per DOT Delhi order No. 269-34/90/STN, there is a direction that Casual Labourers who were employed prior to 31-3-1985 are eligible for temporary status. Further as per CGMT No. R&E/2-4/24/111 dated 4-3-1991, those who are not eligible to be taken on temporary status, they are eligible to be taken on muster rolls. As per OM No. 49(1)4/4/90-Estt(C) dated 8-4-1991 of DOT, Delhi the casual employees who worked prior to 7-6-1988, the age-limit for them as per the Employment Exchange procedure is to be relaxed in respect of economically weaker section of the society but these orders have not been taken into consideration in her case; that her requests and appeals did not yield any result. Therefore, her termination of employment amounts to illegal retrenchment attracting the Provisions of ID Act and is liable to be set aside with a direction to the management to reinstate her in service with back wages and costs of the proceedings.

3. The management viz. the General Manager, D. K. Telecom District, Mangalore (the Second Party as per the reference schedule) filed its counter statement contending that the first party, Smt. K. Shantha was never appointed and was not engaged in its establishment as a part time sweeper during the period from 4-3-1979 to 12-7-1987 and thereafter until 18-2-1990 as casual mazdoor as claimed by her. There was no representation received from the first party by the second party nor the second party has participated in the conciliation proceedings on the complaint of the first party before the Assistant Labour Commissioner (Central) at any time; that the Writ Petition

No. 38457/2001 was filed by the First Party against the Second Party and the matter has been referred back to this tribunal for fresh proceedings; that from the perusal of the Writ Petition and the documents filed along with it, it is revealed that the first party was working as a part time Sweeper in the office of the Assistant Engineer, Postal Civil Division, Mangalore which is not under the administrative control of the second party management and it is not a unit of D. K. Telecom District nor he is a subordinate officer of General Manager, Telecom, Mangalore as the first party was never engaged by it nor it participated in the conciliation proceedings held before the ALC (C), Mangalore. Therefore, the General Manager, Telecom, Mangalore may be absolved from appearance in this case as reference does not pertain to him.

4. It can be seen from the records, that during the earlier round of the proceedings, the second party management did not file my Counter Statement nor led any evidence. It is also seen from the records that first party also did not lead evidence and thereupon, my learned Predecessor passed an award dated 25-4-2001 rejecting the reference. The first party approached the Hon'ble High Court in the aforesaid writ petition and his Lordship vide order dated 19th October, 2001 allowed the writ petition and remanded the matter back to this tribunal for reconsideration of the matter giving opportunity to the Second Party to file its Counter Statement. It is after the remand, the second party management has filed the above said Counter Statement on 12-3-2003. In between 12-3-2003 and 8-3-2004, proceedings were not taken for hearing as my learned Predecessor retired from service on 5-4-2003.

5. When, the matter was taken up on 17-6-2004, the first party having appeared before this tribunal sought adjournment to engage a lawyer on the next date. On 2-8-2004, learned advocate appearing for the first party filed application at IA No.1 to implead the Assistant Engineer, Postal Civil Division, Mangalore as necessary party to the present proceedings. No objections were filed by the Second Party Management to the above said application and the party to be impleaded since did not appear before this tribunal despite the service of the notice, said application was allowed by order dated 29-12-2004 and the party to be impleaded was brought on record by way of amendment to the claim statement. Once again, party impleaded was issued with an RPAD notice and it sent a letter dated 20-12-2005 received by this tribunal on 26-12-2005 stating that it is not concerned with the present proceedings as the matter is completely being dealt with by the department of telecom and the department of postal has been bifurcated in the year 1986, itself. Therefore, the matter came to be posted for evidence of the first party and on 8-2-2006 the first party filed affidavit by way of her examination chief. On 28-3-2006 when the first party was present before this tribunal being tendered for cross

examination, there being, no representation from the Second Party No.1 and 2. She stood discharged and the case came to be posted for evidence of the management. On 1-6-2006 Second Party No.1 filed affidavit of one Mr. Venkataraman said to have been working as AGM (Admn.) in its establishment and his statement in the affidavit was in line with the contentions taken by the Second Party No.1 in the aforesaid Counter Statement. However, this management witness before this tribunal on 19-9-2006, 4-10-2006 and 22-11-2006 for the purpose of his cross-examination and there being no representation on behalf of the Second Party No.1, MW1 came to be discharged and the matter came to be posted for arguments.

6. I have heard the learned counsel for the first party on 1-2-2007 on which date also there was no representation on behalf of the Second Party No.1 and hence this award.

7. Learned, counsel for the first party, Shri MD vehemently argued that the statement of the first party filed before this tribunal in support of her averments in the Claim Statement since has not been controverted or challenged by way of cross-examination either on behalf of the Second Party No.1 or Second Party No. 2 and since the management witness who filed an affidavit did not subject himself to cross-examination, a finding is required to be recorded by this tribunal holding that the management either, the Second Party No.1 or Second Party No.2 were not justified in denying employment to the first party w.e.f. 19-2-1990 and that their action in denying employment amounts to illegal retrenchment as defined under Section 2(oo) of the I.D. Act read with Section 25F of the I.D. Act.

8. I find substance in his arguments. As noted above, the first party filed affidavit evidence by way of examination chief, almost, reiterating whole of the averments made in her claim statement referred to supra. This statement of the first party by way of affidavit as noted above, has remained to be challenged and questioned on behalf of the Second Party No. 1 and 2, there being no cross-examination to her. The contention of the Second Party No.1 that the first party was never engaged by it at any point of time has not been substantiated by way of any oral or documentary evidence. The affidavit evidence of MW1 filed on behalf of the Second Party No. 1 will have no evidential value as he failed to tender himself for cross examination. As far as Second Party No.2 is concerned, it has raised its hands by sending a letter to this tribunal stating that it is nothing to do with the present proceedings as its department has been bifurcated from the Telecom Department in the year 1986 itself. Therefore, the statement of the first party have gone unchallenged and there is no evidence either on the part of Second Party No.1 or on the part of Second Party No.2, to the contrary. Then there are absolutely no reasons not to believe the testimony of the first party when she says that she worked continuously from 1979 to 1990 that she has been discontinued from service w.e.f. 19-2-1990 without there being any notice or any compensation being

paid to her. In the result, it must be held that there being no compliance of Section 25 F of the I.D. Act while refusing work to the first party, the action of the management either by the Second Party No.1 or by the Second Party No. 2 is held to be illegal termination by way of illegal retrenchment.

9. Now, coming to the question of any relief to be granted to the first party. First of all there is no explanation offered by the first party worth acceptable as to what prevented her in not raising the dispute for about a period of more than 8 years as reference came to this tribunal in the year 1998 and whereas, her termination was in the year 1990. There cannot be any relief of reinstatement granted in favour of the first party. First of all, she being a casual worker and was denied employment on 19-2-1990, and after a lapse of period of more than 15 years as on this date. She also cannot be given back wages for the period in between the year 1990 and 1998. As per the affidavit of the first party, she was getting a meager wages of Rs. 100 per month while she was working with the management. Therefore, keeping in view the wages she was drawing while serving

with the management and in view of the fact that she was denied compensation on account of retrenchment and the fact that she was in the service of the management for about a period of more than 10 years, it appears to me that ends of justice will be met if she is ordered to be granted a lump sum compensation of Rs. 50,000 in lieu of relief of reinstatement, back wages, compensation and other service benefits as her full and final claim against the Management (both the parties). Hence the following award :

AWARD

The Management (both the parties) jointly and severally are ordered to pay a sum of Rs. 50,000 to the first party towards her full and final claim against them within a period of three months from the date of publication of this award. Failing which the amount shall carry interest at the rate of 9 per cent on the said amount till its realization. No orders to cost.

(Dictated to PA transcribed by her corrected and signed by me on 9th March 2007)

A.R. SIDDIQUI, Presiding Officer



